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Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-241

In re Applications of

Minnesota Christian Broadcasters, Inc. (hereafter "MCB") — File No. BPH-880609MI

The Bellfonte Company (hereafter "TBC") — File No. BPH-880609MJ

For Construction Permit
for a New FM Station on Channel 227C
in Nisswa, Minnesota

HEARING DESIGNATION ORDER

Adopted: April 23, 1990; Released: June 4, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Preliminary Matters.* MCB filed a Motion to Dismiss TBC's application on November 3, 1988, asserting that TBC's application should be dismissed or returned as unacceptable under the Commission's "hard-look" policy. MCB argues that in response to Question 7(b)(3) of Section V-B of FCC Form 301, TBC lists its antenna's height above average terrain (HAAT) as 100 meters, while in its Technical Exhibit, TBC lists its antenna's HAAT as 300 meters. Thus, MCB states that TBC's application is inconsistent on its face. Moreover, in light of this inconsistency, MCB maintains that the Commission cannot determine whether TBC's application meets the requirements of 47 C.F.R. § 73.211(a)(2).

3. Our review of TBC's proposal does reveal the discrepancy pointed out by MCB. However, because the correct information was listed in several others places in the application, the staff could "drawing on the application as a whole," confidently verify the correct HAAT and determine that the proposal is consistent with the Commission's Rules. Therefore, the discrepancy is neither a tenderability nor acceptability defect requiring dismissal of TBC's application. Consequently, MCB'a Motion to Dismiss will be denied.

4. TBC petitioned for leave to amend its application on May 16, 1989. The accompanying amendment proposed a new site. TBC stated that it had been informed by the Federal Aviation Administration that its originally proposed site violated Part 77 obstruction standards and consequently a determination of hazard would be forthcoming. MCB filed an opposition to the petition for leave to amend. MCB maintains that TBC's petition failed to demonstrate good cause for its amendment in that: (1) TBC has not shown that it has acted with due diligence; (2) TBC would gain a comparative advantage from its amendment; and (3) acceptance of the amendment could lead to the specification of a coverage issue against TBC.

5. In its reply, TBC asserts that it was advised by the FAA that its proposal violated Part 77 in March, 1989. Two months later, TBC filed its petition for leave to amend. Moreover, since the period for filing amendments as of right has passed, TBC contends that it will not be allowed to gain a comparative advantage by virtue of its amendment. Finally, with respect to the city grade contour issue, TBC points out that no issue is warranted as its proposal is in compliance with the rule.

6. All amendments filed outside the specified periods for amendments as of right and prior to designation for hearing must be accompanied by a showing of good cause, or filed pursuant to 47 C.F.R. §§ 1.65 or 73.3514. Unauthorized or untimely amendments are subject to return by the Commission's staff without consideration. TBC's May 16, 1989 amendment was submitted after the applicable window for amendments as of right and is therefore untimely. However, the Commission has traditionally considered FAA disapproval to be "good cause" for a site relocation amendment. *See, e.g., Orlando FM Group Limited Partnership*, 2 FCC Rcd 4691, 4696 (1987).

7. After examining the information before us, we have determined that TBC has provided the Commission with sufficient specificity for determining the acceptance of the amendment for good cause. TBC has provided a satisfactory factual narrative, albeit in a reply pleading, to establish that it acted with due diligence in submitting the new transmitter site. In keeping with Commission policy, TCB will not be allowed to gain a comparative advantage from this new site.

8. However, study of the engineering data submitted by TBC reveals that the applicant does not clearly demonstrate that it provides a 3.16 mV/m signal to the entire proposed city of license, as required by Section 73.315(a) of the Commission's Rules. The FM Branch does not require waiver of this requirement unless the proposed 3.16 mV/m coverage falls below 80% of the area of the principal community. *See John R. Hughes*, 50 Fed. Reg. 5679 (February 11, 1985). *See* also *Southwest Communications, Inc.*, released July 16, 1986 (Letter from the Chief, FM Branch, reference 8920-HVT). Engineering study indicates that due to the small scale of the map provided by the applicant we cannot accurately verify the percentage of the city grade coverage. Accordingly, TBC will be required to submit a more detailed exhibit to verify compliance with the 70 dBu city grade coverage requirement of 47 C.F.R. § 73.315(a) to the presiding Administrative Law Judge within 30 days after this Order is released. Therefore, TBC's petition for leave to amend will be granted and the accompanying amendment will be accepted to the extent noted herein. MCB's opposition will be denied.

9. The applicants below have petitioned for leave to amend their application on the dates shown. The accompanying amendments were filed after the last date for filing amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	AMENDMENTS FILED
MCB	November 16, 1988(engineering)
TBC	May 16, 1989 (engineering)

10. Section II, Item 4 of FCC Form 301 (October 1986) requires that an applicant specify its address (number, street, city, state) as well as the home address of each of its principal. MCB has not completed Item 4 correctly. MCB's application gives a post office box number as the residence address for each principals except Bo Wickstrom and Lanny Scearcy. Accordingly, MCB must submit an amendment which gives all the information required by Section II, Item 4 to the presiding Administrative Law Judge after this Order is released.

11. MCB is licensee of KTIG(FM) in Pequot Lakes, NM. MCB has indicated its intent to terminate its relationship with KTIG in the event of grant of the referenced application. Accordingly, in the event of grant of MCB's application, MCB will be required to sever all connections with KTIG prior to the commencement of program test authority.

12. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

13. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

14. IT IS FURTHER ORDERED, That the November 3, 1988 Motion to Dismiss filed by MCB IS HEREBY DENIED.

15. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, TBC shall submit a map showing the 70 dBu contour and the exact boundaries of the city of license with the presiding Administrative Law Judge.

16. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by MCB and TBC ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

17. IT IS FURTHER ORDERED, That MCB shall submit an amendment which contains the information required by Section II, Item 4 of FCC Form 301, to the presiding Administrative Law Judge within 30 days after the release of this Order.

18. IT IS FURTHER ORDERED, That in the event of grant of MCB's construction permit application, MCB shall sever all connections with KTIG(FM) prior to the commencement of program test authority.

19. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

20. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

21. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-242

In re Applications of

LYN-WIN BROADCASTING, INC. (hereafter "Lyn-Win") File No. BPH-880616MR

DUPLIN COUNTY BROADCASTERS (hereafter "Duplin") File No. BPH-880616MS

For Construction Permit for a New FM Station on Channel 284A (104.7 MHz) in Rose Hill, North Carolina

HEARING DESIGNATION ORDER

Adopted: April 23, 1990; Released: June 4, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. Lyn-Win petitioned for leave to amend its application on August 24, 1989. The accompanying amendment was filed after October 5, 1988, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

3. Section II, Item 4 FCC Form 301 (October 1986) requires that an applicant specify its address (number, street, city, state) as well as the home address of each of its principals. Lyn-Win and Duplin each has not completed Item 4 correctly. Lyn-Win's application gives a post office box number as the residence address for James B. and Peggy Q. Blanchard. Duplin's application gives only the city and state as the residence for William Mills. Accordingly, Lyn-Win and Duplin each must submit an amendment which gives all the information required by Section II, Item 4 to the presiding Administrative Law Judge after this Order is released.

4. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a susequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

6. IT IS FURTHER ORDERED, That the petition for leave to amend filed by Lyn-Win IS GRANTED, and the corresponding amendment IS ACCEPTED to the extent indicated herein.

7. IT IS FURTHER ORDERED, That Lyn-Win and Duplin each shall submit an amendment which contains the information required by Section II, Item 4 of FCC Form 301, to the presiding Administrative Law Judge within 30 days after the release of this Order.

8. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

9. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

10. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-240

In re Applications of

TRINITY VALLEY BROADCASTING CO., INC. (hereafter "Trinity") — File No. BPH-880725NC

CHARLES ARNOLD DEMAREE (hereafter "Demaree") — File No. BPH-880725NG

For Construction Permit for a New FM Station on Channel 234C2 (94.7 MHz) in Woodville, Texas

HEARING DESIGNATION ORDER

Adopted: April 23, 1990; Released: June 4, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. Section II, Item 4 of FCC Form 301 (October 1986) requires that an applicant specify its address (number, street, city, state) as well as the home address of each of its principals. Trinity and Demaree each has not completed Item 4 correctly. Trinity's application gives a post office box number as the residence address for Don L. Stevenson. Demaree's application gives a post office box as his residence address. Accordingly, Trinity and Demarre each must submit an amendment which gives all the information required by Section II, Item 4 to the presiding Administrative Law Judge after this Order is released.

3. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

4. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

6. IT IS FURTHER ORDERED, That Trinity and Demaree each shall submit an amendment which contains the information required by Section II, Item 4 of FCC Form 301, to the presiding Administrative Law Judge within 30 days after the release of this Order.

7. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

8. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

9. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-255

In re Applications of

WMRI, INC. (hereafter "WMRI")	File No. BPH-880722MI
KATIECO, INC. (hereafter "Katieco")	File No. BPH-880725MH
MCLEAN COUNTY BROADCASTERS, INC. (hereafter "McLean")	File No. BPH-880725MK
PAMELA R. JONES (hereafter "Jones")	File No. BPH-880725ML

For Construction Permit for a
New FM Station on Channel 286A
(105.1 MHz) in Ellettsville, Indiana

HEARING DESIGNATION ORDER

Adopted: May 1, 1990; Released: June 4, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and Katieco have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by Katieco would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

3. Section II, Item 4 of FCC Form 301 (October 1986) requires that an applicant specify its address (number, street, city, state) as well as the home address of each of its principals. McLean has not completed Item 4 correctly. McLean's application gives a post office box number as the residence address for each of its principals. Accordingly, McLean must submit an amendment which gives all the information required by Section II, Item 4 to the presiding Administrative Law Judge after this Order is released.

4. The applicants below have petitioned for leave to amend their application on the dates show. The accompanying amendments were filed after the last date for filing amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	AMENDMENTS FILED
Katieco	August 1, 1989; September 27, 1989
McLean	October 30, 1989; January 2, 1990; March 6, 1990
Jones	March 14, 1989; March 19, 1990

5. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

6. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by Katieco would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

8. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

9. IT IS FURTHER ORDERED, That McLean shall submit an amendment which contains the information required by Section II, Item 4 of FCC Form 301, to the presiding Administrative Law Judge within 30 days after the release of this Order.

10. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Katieco, McLean and Jones ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

11. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

12. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by

attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

13. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-268

In re Applications of

Stephanie Linn (hereafter "Linn") File No. BPH-890118MA

Hal D. Fowler (hereafter "Fowler") File No. BPH-890118MB

For Construction Permit for a
New FM Station on Channel 248C2
in Gleneden Beach, OR

HEARING DESIGNATION ORDER

Adopted: May 1, 1990; Released: June 4, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. Linn and Fowler petitioned for leave to amend their applications after the last day for filing amendments as of right. The subject amendments were accompanied by the good cause showing required by 47 C.F.R. § 73.3522(a)(2); consequently, the amendments are accepted for filing. However, an applicant may not improve its comparative advantage after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	AMENDMENTS FILED
Linn	December 11, 1989
Fowler	February 5, 1990

3. Section II, Item 4 of FCC Form 301 (October 1986) requires that an applicant specify its address (number, street, city, state) as well as the home address of each of its principals. Fowler has not completed Item 4 correctly. Fowler's application gives a post office box number as the residence address for Hal D. Fowler. Accordingly, Fowler must submit an amendment which gives all the information required by Section II, Item 4 to the presiding Administrative Law Judge after this Order is released.

4. Linn proposes to locate its antenna on the existing tower currently utilized by KYQT-FM, Newport, Oregon. Fowler proposes to sidemount its antenna on the existing tower of KCRF-FM, Lincoln City, Oregon. Our engineering study indicates that these proposals may significantly exceed the ANSI guidelines for human exposure to radio frequency (RF) radiation as outlined in OST Bulletin No. 65 (October 1985). Consequently, we are concerned that Linn and Fowler may have failed to comply with the environmental criteria set forth in the *Report and Order* in GEN Docket No. 79-163, 51 Fed. Reg. 14999 (April 12, 1986). Under the rules, applicants must determine whether their proposals would have a significant environmental effect under the criteria set out in 47 C.F.R. § 1.1307. If the application is determined to be subject to environmental processing under the 47 C.F.R. § 1.1307 criteria, the applicant must then submit an Environmental Assessment (EA) containing the information delineated in 47 C.F.R. § 1.1311. 47 C.F.R. § 1.1307 states that an EA must be prepared if the proposed operation would cause exposure of workers or the general public to levels of RF radiation exceeding specific standards. Since the proposals of Linn and Fowler may have a significant environmental impact as defined by 47 C.F.R. § 1.1307, the applicants will be required to submit the environmental impact information described in 47 C.F.R. § 1.1311. These studies must include the effects of radio frequency radiation on the environment. In this regard, if the site is presently fenced in compliance with the guidelines, Linn and Fowler are required to so state and give the distance from the base of the tower to the fence. Accordingly, Linn and Fowler will be required to file, within 30 days of the release of this Order, an EA with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. *See Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

5. The Commission's Report and Order in MM Docket 89-13, 4 FCC Rcd 7796 (1989), allocated Channel 248C2 in lieu of Channel 264C2 at Gleneden Beach, Oregon. Consequently, it is necessary for Fowler to submit an amendment specifying Channel 248C2, allotted to Gleneden Beach, Oregon effective December 14, 1989, rather than Channel 264C2 as his application presently states.[1] Accordingly, Fowler will be ordered to do so below.

6. Fowler, as indicated above, has proposed to locate its antenna on the tower of KCRF-FM, Lincoln City, Oregon. According to FCC records, the accepted coordinates for this existing structure are 44^0 52' 30" North Latitude, 123^0 59' 03" West Latitude; these are the coordinates proposed in Fowler's application. However, the licensee of KCRF-FM has recently corrected the coordinates of that station to 44^0 52' 32" North Latitude, 123^0 59' 03" West Latitude. *See* construction permit application BPH-890330ID. Accordingly, Fowler must also amend its application to reflect the new coordinates. Such amendments may be filed since the existing tower is listed in the Commission's records and Fowler's listing of the coordinates found in the Commission's database is therefore neither an acceptability nor a tenderability defect.

7. As indicated above, Linn proposes to locate its antenna on the existing tower of KYQT(FM). However, as indicated in Exhibit E-3 of her application, Linn "proposes to extend the height of the KYQT tower to an overall height above ground of 132.9 meters [the tower currently is 46.7 meters above ground level] including lighting." Linn has not received FAA approval for the proposed construction. Therefore, an air hazard issue will be specified below.

8. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

9. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to Linn and Fowler in which it is concluded that the proposed facility is likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §§ 1.1301-1319.

2. To determine whether there is a reasonable possibility that the tower height and location proposed by Linn would constitute a hazard to air navigation.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

10. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Linn and Fowler ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

11. IT IS FURTHER ORDERED, That Fowler shall submit an amendment which contains the information required by Section II, Item 4 of FCC Form 301, to the presiding Administrative Law Judge within 30 days after the release of this Order.

12. IT IS FURTHER ORDERED, That in accordance with paragraph 4 hereinabove, Linn and Fowler shall submit the environmental assessment required by 47 C.F.R. § 1.1311 to the presiding Administrative Law Judge within 30 days of the release of this Order, with a copy to the Chief, Audio Services Division.

13. IT IS FURTHER ORDERED, That Fowler shall submit an amendment to reflect the allocation of channel 248C2 in lieu of Channel 264C2 to Gleneden Beach, OR to the presiding Administrative Law Judge within 30 days after the release of this Order.

14. IT IS FURTHER ORDERED, That, in accordance with paragraph 6 above, Fowler shall submit an amendment to reflect the change of tower coordinates submitted to the FCC by KCRF-FM, the owner of the tower upon which Fowler proposes to locate his antenna.

15. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

16. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

17. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

18. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTE

[1] Linn submitted an amendment responsive to the *Report and Order* in MM Docket 89-13 on December 11, 1989.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-254

In re Applications of

CLASS A. COMMUNICATIONS	File No. BPH-880504MI
ROBERT D. SHORT, JR.	File No. BPH-880505MC
PHOENIX FM BROADCASTERS LIMITED PARTNERSHIP (hereafter "Phoenix")	File No. BPH-880505MD
JERRELL E. KAUTZ AND SINAN MIMAROGLU, A PARTNERSHIP	File No. BPH-880505MK
THREE RIVERS RADIO COMPANY	File No. BPH-880505NF
ZEBRA BROADCASTING CO., INC.	File No. BPH-880505PB

For Construction Permit for a
New FM Station on Channel 271A
in Phoenix, New York

HEARING DESIGNATION ORDER

Adopted: May 1, 1990; Released: June 4, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Phoenix*. Roanoke Valley Cellular Telephone Co., Inc. ("RVCTC") is a 60% limited partner in Phoenix. Billy J. Parrott the sole officer and stockholder of of RVCTC, is also the President and a 42.3% stockholder of Private Networks, Inc. ("PNI"). PNI is also involved as a partner with Broadcast Data Corporation, a wholly-owned subsidiary of Graphic Scanning Corporation.

3. In pending MM Docket No. 89-543 (Sacramento, California), Broadcast Data Corporation is listed as a limited partner in the application of FMBLP (File No. BPH-871110NQ). FMBLP stated on page 7 of Exhibit II of its application for Sacramento, California that

> "[i]n an action relative to Broadcast Data Corp.'s parent company, Graphic Scanning Corp., by Order released August 24, 1982 (FCC-391) the Commission designated for hearing applications filed by A.S.D. Answer and P.A.L. Communications Systems, Inc. The stated purpose of the proceeding was to determine the relationship between Graphic and the applicants and, in particular, whether Graphic is a real party in interest in the applicants. In an Initial Decision released January 9, 1985, the presiding Administrative Law Judge concluded a) that, because of the nontraditional nature of the transactions involved, Graphic shall be deemed the real party in interest in the A.S.D., Vineyard, P.A.L. and B.W. applications; and b) that all parties had exhibited a lack of candor and on occasion, intentionally misrepresented material facts to the Commission.

4. Claiming the above conclusions were without merit, Graphic filed exceptions with the Commission on March 15, 1985. After a proxy fight resulted in new management, Graphic asked the Commission to approve a settlement between the concerned parties. By its *Memorandum Opinion and Order*, released November 21, 1986, the Commission approved such an agreement vacating the conclusions reached in the Initial Decision. This action absolved the revised Graphic corporate entity from the Administrative Law Judge's adverse conclusions, but held that the findings would apply if former Graphic principals Yampol, Slodowitz and Finfer, active in management at the time of the alleged misconduct, were to regain control of Graphic. *A. S. D. Answer Services, Inc. et. al.*, 1 FCC Rcd 753 (1986), at paragraph 6. A petition for reconsideration of this action has been filed.

5. We also note that an affiliate of Broadcast Data Corp.'s parent company, Graphic Scanning Corp., has been named as a defendant in a lawsuit captioned *Utah Telecourier v. MCI Telecommunications Corporation*, et al. (W.D. Utah, 1984) in which the trading of interests in cellular radio telephone partnerships in connection with the Salt Lake City, Utah market has been challenged under state and federal anti-trust laws. *See, e.g. Meridian Communication*, MM Docket No. 86-177, 2 FCC Rcd 3630 (1980). Further, FMBLP stated in its January 3, 1989 amendment to its Sacramento application that "a complaint was filed by the Securities and Exchange Commission in the United States District Court for the Southern District of New York alleging filing with the SEC of certain false, misleading and untimely statements concerning investment made in Graphic Scanning Corp. by Amster & Co., Arnold Marvin Amster, Barry Stuart Lafer and Joel R. Packer in 1987." An appropriate condition will therefore be specified below.

6. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

7. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

9. IT IS FURTHER ORDERED, That in the event a construction permit is awarded to Phoenix as a result of this proceeding, its grant will be without prejudice to (i) whatever action, if any, the Commission may deem appropriate should former Graphic principals Yampol, Slodowitz and Finfer regain control of Graphic; the outcome of (ii) the appeal in A.S.D. Answer Service, Inc. et. al., CC Docket No. 82-587 et seq, (iii) *Utah Telecourier v. MCI Telecommunications Corporation* et al., and (iv) the untitled complaint brought by the U.S. Securities and Exchange Commission in the District Court for the Southern District of New York alleging filing with the SEC of false, misleading and untimely statements.

10. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

11. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

12. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-249

In re Applications of

SOUTHWEST FLORIDA COMMUNITY RADIO, INC. (hereafter "SFCR") — File No. BPED-880624MJ

THE YOUTH FOUNDATION OF AMERICA, INC. (hereafter "Youth") — File No. BPED-890531MC

For Construction Permit for a New Noncommercial, Educational FM Station on Channel 206C1 (89.1 MHz) in Sarasota, Florida

HEARING DESIGNATION ORDER

Adopted: April 23, 1990; Released: June 4, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new noncommercial, educational FM station.

2. *Preliminary Matter*. None of the applicants have indicated an attempt has been made to negotiate a share-time arrangement. Therefore, an issue will be specified to determine whether a share-time arrangement between the applicants would be the most effective use of the frequency, and thus better serve the public interest. *Granfalloon Denver Educational Broadcasting, Inc.*, 43 Fed. Reg. 49560, published October 24, 1978. In the event that this issue is resolved in the affirmative, an issue will also be specified to determine the nature of such an arrangement. It should be noted that our action specifying a time-sharing issue is not intended to preclude the applicants, either before the commencement of the hearing or at any time during the course of the hearing, from participating in negotiations with a view toward establishing a share-time arrangement.

3. *Other matters*. Inasmuch as it appears that there would be a significant difference in the size of the areas and populations which would receive service from the proposals, and since this proceeding involves competing applicants for noncommercial, educational facilities, the standard areas and populations issue will be modified in accordance with the Commission's prior action in *New York University*, FCC 67-673, released June 8, 1967, 10 RR 2d 215 (1967). Thus, the evidence adduced under this issue will be limited to available noncommercial, educational FM signals within the respective service areas.

4. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine: (a) whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest and, if so, the terms and conditions thereof; (b) the extent to which each of the proposed operations will be integrated into the overall cultural and educational objectives of the respective applicants; and (c) whether other factors in the record demonstrate that one applicant will provide a superior FM educational broadcast service.

2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

6. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

7. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

8. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-246

In re Applications of

FAMILY LIFE MINISTRIES RADIO, INC. (hereafter "Family") Canandaigua, New York, Channel 205A	BPED-871203MD
UNIVERSITY OF ROCHESTER BROADCASTING CORPORATION (hereafter "University of Rochester") Rochester, New York, Channel 203A	BPED-871208MC
COMMUNITY BROADCASTING FOUNDATION, INC. (hereafter "Community") Rochester, New York, Channel 205A	BPED-880912MB

For a Construction Permit for a
New Noncommercial Education FM Station

HEARING DESIGNATION ORDER

Adopted: April 23, 1990; Released: June 4, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new noncommercial educational FM station.

2. *Informal objection.* WSKG Telecommunications Council ("WSKG") filed an informal objection against Family on September 27, 1989. WSKG alleges that "serious qualifications issues" raised in its October 1, 1987 petition to deny Family's application for Elmira, New York, File Number BPED-870209MI, were still outstanding. However, since the instant informal objection was filed, we have granted the construction permit for Elmira and denied WSKG's petition to deny. *See Letter to WSKG Public Telecommunications Council* from the Chief, Audio Services Division, reference 8920-JR, (March 21, 1989). Thus the issues raised by WSKG have been addressed. Accordingly, the WSKG informal objection will be dismissed.

3. *307 (b).* The respective proposals, although for different communities, would serve substantial areas in common. Consequently, in addition to determining (pursuant to 47 U.S.C. § 307(b)) which of the proposals would better provide a fair, efficient and equitable distribution of radio service, a contingent comparative issue will be specified.

4. *Areas and Populations.* Inasmuch as it appears that there would be a significant difference in the size of the areas and populations which would receive service from the proposals, and since this proceeding involves competing applicants for noncommercial educational facilities, the standard areas and populations issue will be modified in accordance with the Commission's prior action in *New York University*, FCC 67-673, released June 8, 1967, 10 RR 2d 215 (1967). Thus, the evidence adduced under this issue will be limited to available non-commercial educational FM signals within the respective service areas.

5. *Late-filed amendment.* The applicant below has petitioned for leave to amend its application on the date shown. The accompanying amendment was filed after the "B" cut-off date, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

APPLICANT	DATE FILED
Family	May 23, 1989

6. Except as indicated above, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, IT IS ORDERED, That, pursuant to 47 U.S.C. § 309(e), as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine: (a) the number of other reserved channel noncommercial educational FM services available in the proposed service area of each applicant, and the area and population served thereby; (b) whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest and, if so, the terms and conditions thereof; and (c) in light of 47 U.S.C. § 307(b), which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

2. To determine, in the event it is concluded that a choice between the applications should not be based solely on considerations relating to § 307(b), the extent to which each of the proposed operations will be integrated into the overall educational operation and objectives of the respective applicants; and whether other factors in the record demonstrate that one applicant will provide a superior FM educational broadcast service.

3. To determine, in light of the evidence adduced pursuant to foregoing issues, which of the applications, if either, should be granted.

8. IT IS FURTHER ORDERED That the informal objection filed by WSKG against Family IS HEREBY DISMISSED.

9. IT IS FURTHER ORDERED, That the petition for leave to amend filed by Family IS GRANTED, and the corresponding amendment IS ACCEPTED to the extent indicated herein.

10. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

11. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

12. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Service Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-560

In re Applications of

RAYNE BROADCASTING COMPANY INC.	File No. BPH-861125ME
Simla B. Ellis d/b/a SIMLA BROADCASTING	File No. BPH-861125MK

For Construction Permit
for New FM Station,
Channel 294A,
Rayne, Louisiana

MEMORANDUM OPINION AND ORDER

Adopted: May 14, 1990; Released: June 6, 1990

By the Review Board: MARINO (Chairman), BLUMENTHAL, and ESBENSEN. Chairman MARINO issuing Separate Statement.

1. Before the Review Board is the *Initial Decision*, 4 FCC Rcd 6552 (1989)(I.D.), of Administrative Law Judge Richard L. Sippel (ALJ), as well as the exceptions and replies thereto filed by the captioned parties. Oral argument in this proceeding was heard on March 7, 1990. The parties were afforded one week subsequent to oral argument to attempt to reach a settlement, and they thereafter jointly requested two extensions of time in which to complete settlement negotiations, if possible. Having held this case in abeyance for some seven weeks at the parties request, the Board has now been informed that no settlement appears likely.

2. Following oral argument, and our review of the various documents and pleadings in this proceeding, the Board has determined that a remand to the presiding ALJ for further hearings on the issues we are specifying here (and the preparation of a Supplemental Initial Decision) is necessary before final resolution of this case. More specifically, we find that there are substantial and material questions of fact with respect to the basic qualifications of both applicants which must be resolved, and it may be ultimately determined that neither applicant is qualified to be a licensee.

RAYNE BROADCASTING CO., INC. (RBC)

3. *Real-Party-In-Interest* : Simla initially sought a real-party-in-interest issue against RBC in the proceeding below. The ALJ denied this request by *Memorandum Opinion and Order*, FCC 88M-4354, released December 22, 1988. Before the Board, Simla renews its request for a similar issue.

4. The ALJ found that RBC is a Louisiana corporation, capitalized with 1000 shares of voting stock. Melinda B. Lizotte is president, a director and a 50% voting shareholder (500 shares); Wendell M. Byers is vice-president, secretary, a director and a 50% shareholder (500 shares) (RBC Exh. 1). RBC filed its Articles of Incorporation on November 17, 1986, and its application on November 25, 1986 (I.D., para. 12). The ALJ also found that Lizotte learned about the allocation of a new FM frequency for Rayne from her brother, Michael Basso (Louis M. Basso, Jr.) (Tr. 694). Byers is said to have first learned of the allocation through a communications attorney who was also counsel for station KJCB where Byers had been employed (Tr. 576). Lizotte had known Byers for many years as an employee for her father, Louis M. Basso, Sr. (Tr. 695). In early 1986, Byers was meeting with Louis Basso and Lizotte when Basso was seeking to purchase station KFXZ(FM), Maurice, Louisiana, a broadcast property owned by Simla Ellis (the competing applicant here) (Tr. 696). At about the time that those purchase efforts failed, Lizotte called Byers to discuss Byers' participation in the RBC application. Thereafter, Lizotte met with Byers to firm up a proposal for the instant application (Tr. 699-701).

5. Lizotte had been a 10% shareholder in a licensee corporation owned principally by her father, Louis Basso, KSIG Broadcasting Company (KBC). She sold her interest back to KBC in April 1988 (Tr. 755), but it was revealed at hearing that Lizotte will be allowed to reacquire her KBC stock interest, if she is unsuccessful in the instant proceeding (Tr. 215). KBC is currently the licensee of KTQQ(FM), Sulphur, Louisiana, and was the former licensee of KSIG(AM), Crowley, Louisiana (Tr. 183). Michael Basso, Lizotte's brother, is also actively involved in the management of KBC (RBC Exh. 6.).

6. The ALJ found that Louis Basso and his wife initially loaned Lizotte and Byers $20,000 to fund the initial stages of their application. That loan was allegedly later repaid (Tr. 200-201). Thereafter, at the behest of Louis Basso, KBC advanced Lizotte $16,600 against her shares of KBC stock (Tr. 754) that Lizotte and Byers used to fund their application here. The delivery of her shares of KBC stock back to KBC in April 1988 allegedly cancelled the debt. The ALJ found that, thereafter, RBC obtained a commitment for a $200,000 bank loan with Louis Basso's assistance. Louis Basso submitted written testimony dated September 10, 1988, declaring that he suggested to Lizotte and Byers that they contact the First National Bank of Crowley (FNBC) about financing, and that he would act as guarantor for the loan if that were required (RBC Exh. 6). FNBC has an option to require Louis Basso's personal guaranty, and the pledge of his stock in KBC to secure an RBC loan, and Louis Basso has agreed to be a guarantor (Tr. 191). Basso testified, in fact, that he expects FNBC to require his KBC stock pledge. and to be in a position to do so (Tr. 217).

7. Simla observes that although Lizotte initially testified that her father did not recommend FNBC to her (Tr. 710), Louis Basso testified that he had spoken to both

Lizotte and Byers about using FNBC for RBC's financing (Tr. 188-189). Basso also testified that he has had a long-standing business relationship with FNBC, and in particular with FNBC's president, Richard Seale (Tr. 190). Basso also testified that Seale did all of Basso's financing on the sale of KSIG radio (Tr. 194); and, according to Basso, he and Seale have been close personal friends since 1970 (Tr. 191). Basso further testified that KBC already has a $700,000 line of credit with FNBC, secured by a pledge of Basso's KBC stock (Tr. 199-200, 216-218, 220-222). *See* Simla Exceptions at 67-69. [1]

8. Although Basso said that he does not expect to play much of a part in RBC's business, except to "give advice" (Tr. 207), he admitted that if FNBC requires his personal guaranty of the $200,000 loan to RBC, he would probably "become active" in the RBC facility. Basso's hearing testimony revealed the following (Tr. 219; emphasis added):

> [RBC Counsel]: If you are in fact called upon by the First National Bank to provide your guarantee of a loan, would that provision by you cause you to become in any way in Rayne Broadcast Company's affairs beyond that involvement you might have had, if any, prior to the time you gave your guarantee?
>
> [Basso]: Mr. Raclin, if the Rayne -- if the First National Bank asked that I personally guarantee the loan, then *I think that I would probably become active to the point to be sure that my daughter and Mr. Byers were on a straight track*. I am sure that they would ask my advice, and I am sure that I would give it to them.

9. Simla further claims that Basso has played an active role in settlement negotiations between RBC, Simla, and another former applicant (Tr. 205, 583, 731-33), and Lizotte admitted that her father's role in these negotiations was, indeed, "active" (Tr. 733). More specifically, Lizotte testified (*id.*; emphasis added):

> [My father has] been there when I needed him, yes. In the last four or five months we were really trying hard to get this thing settled. We didn't want to have to put the Court through another FCC hearing. And he has, he, anytime I've asked to do anything, or if I've had a problem I did not know how to handle it, he's been there. *Yes. He's been active.*

Basso merely characterized his role in settlement negotiations as "sort of an arbitrator," sitting in on discussions with his daughter, and other applicants (Tr. 205). However, Basso's testimony in this regard revealed the following (Tr. 205-206; emphases added):

> [Simla Counsel]: What has been your role in the settlement negotiations of this case?
>
> [Basso]: I have met with Mr. Charles Ellis, Mrs. Simla Ellis, I have met and talked with [a former applicant]. I think all parties have talked at different times, and I have been involved as sort of an arbitrater [sic] with my daughter and sat in with her, like Mr. Ellis would sit in [with a former applicant], and I have talked with [other former applicants].
>
> [Simla Counsel]: I don't quite understand. Did you initiate settlement discussions in this case?
>
> [Basso]: *I don' t think so*. I think I have telephone records that in all probability will show that I was called most of the time.
>
> [Simla Counsel]: Why would you have gotten involved in your daughter's project?
>
> [Basso]: She is my daughter, Mr. Borsari. If she asks me, "Daddy, can you help, sit down with Mr. Ellis and Mrs. Ellis and solve this and see if we can all come up with an arrangement?" I said certainly I would sit down.
>
> [Simla Counsel]: And she asked you to be involved in the settlement discussions?
>
> [Basso]: *I think she asked me* to sit down and be in on it, yes.

Simla, however, contends that Louis Basso was far more than an "arbitrator," claiming that Charles Ellis' testimony (Tr. 880-881) reveals Basso was, in fact, an initiator.

10. The ALJ also found that Michael Basso was present at RBC's intitial corporate meeting, and was a witness to Lizotte's execution of RBC's Articles of Incorporation. I.D., para. 14. Further, the ALJ found that Michael had "assisted in obtaining the [RBC] transmitter site." *Id.*, at para. 20. Additionally, according to Lizotte, Michael has continuously been attempting to acquire broadcast properties in Louisiana, either through purchase or via the comparative hearing process. Lizotte testified that Michael "was constantly trying to find another property to buy . . . something else to be filed for" (Tr. 694-695; 704-705).

11. Based on the record evidence demonstrating the active involvement of Louis and Michael Basso, Simla's exceptions claim that a *prima facie* question has been raised as to whether those individuals will, or would, control the proposed RBC station. "The test for determining whether a third party is a real-party-in-interest is whether that person [or persons] has an ownership interest, or will be in a position to control, actually or potentially, the operation of the station." *San Joaquin Television Improvement Corporation*, 2 FCC Rcd 7004, 7008 (1987); *Perry Television, Inc.*, FCC 90R-14, released March 16, 1990; *see also Cannon's Point Broadcasting Co.*, 93 FCC 2d 643, 651 (Rev. Bd. 1983,) *review denied*, FCC 84-161 (April 16, 1984), *remanded on other grounds. Steele v. FCC*, No. 84-1176 (D.C. Cir. October 9, 1986)(subsequent history omitted); *Mobile Phone of Texas*, 52 RR 2d 1455, 1459 & n. 7 (1982); *KOWL, Inc.*, 49 FCC 2d 962, 964 (Rev. Bd. 1974).

12. Of course, as the Board recently repeated in *Magdalene Gunden Partnership*, 2 FCC Rcd 5513, 5516 (Rev. Bd. 1987):

> Parties seeking [a real-party-in-interest] issue where family members are involved . . . bear a heavy burden since the Commission recognizes that even independent family relationships may have attributes such as financial ties which in a non-family relationship would be persuasive indicia of real party status.

See also Cannon's Point Broadcasting Co., supra ; *Alabama Radio Corporation*, 69 FCC 2d 1256, 1263-1264 (1978). Although it is true that familial relationships, *standing alone*, do not necessarily raise a presumption of real-party status, *Llerandi v. U. S.*, 863 F.2d 79 (D.C. Cir. 1988), and that "even independent family relationships may have attributes, such as financial and business ties, which in non-family relationships would be persuasive indicia of common ownership or control or real party status," *Cannon's Point*, 93 FCC 2d at 654, 655, it is also clear that we will examine such relationships where there are "close business ties" and the "independence" of a family member is seriously called into question. *Id.*, at 655. *See generally Arnold L. Chase*, FCC 89-366, released March 14, 1990, para. 13.

13. Taken individually, the activies of Louis and Michael Basso in aid of the RBC application might not raise real-party-in-interest questions, since it is not unnatural for family members to assist each other without expectation of personal profit. Here, however, the testimony and evidence viewed as a whole suggest an active participation of non-principals that call into question Lizotte's independence in stewarding RBC. Indeed, Louis Basso has candidly testified that he would become active to protect his financial interests, and has been active in representing RBC in this proceeding. Michael Basso has also acted at times as if he were an RBC principal, or nearly so. Accordingly, we believe that Simla has met its burden and that a hearing on the following issue is necessary. [2]

> 1. To determine whether Louis M. Basso, Sr. and/or Louis M. ("Michael") Basso, Jr. are real-parties-in-interest in the application of Rayne Broadcasting Co., Inc., and the effect thereof of the qualifications of that applicant to be a Commission licensee.

SIMLA BROADCASTING (SIMLA)

14. *Real-party-in-interest* : The ALJ determined that Simla Ellis had previously constructed and operated radio station KFXZ(FM), Maurice, Louisiana from March 1985 to October 1986. She was there a 51% shareholder, president and director of the licensee company, Maurice Broadcasting Inc., but later sold her interest in the licensee to her minority (49%) shareholder, Sharon LeDeaux, and resigned her position as general manager of KFXZ(FM) in June 1986 (Simla Exh. 2). The ALJ also found that Charles Ellis (husband of Simla Ellis) assisted his wife in both obtaining and operating the Maurice station. He prepared the engineering portion of that application (Tr. 843), performed engineering functions, prepared a modification to that station's application, and supervised the tower construction of KXFZ(FM) (Tr. 845-46). Moreover, he also totally managed and supervised all aspects of the station in the last month prior to its transfer to LeDeaux. Consequently, the ALJ determined that this evidence was corroborative of the practice of Simla and Charles Ellis to share operational control of broadcast ventures in which either has been involved (I.D., para. 40).

15. As to the instant proceeding, the ALJ also found that the record evidence reflected that all of the money used for Simla's expenses here came from the Ellis' joint checking account, and that most of the cash in that account was provided by Charles Ellis. As at the Maurice station, Charles Ellis here prepared the engineering portion of Simla's application, as well as playing a key role in the business plan of the proposed facility. He also negotiated directly with the transmitter site owner, drafted an option for the land, and actively participated in settlement negotiations (beyond a mere advisory role) with the other applicants (I.D., para. 51).

16. In determining that Simla was entitled to no "integration" credit, the ALJ ultimately concluded (I.D. para. 52; emphases added):

> *These circumstances establish control by Charles Ellis over Simla's application and a likelihood that such control would continue after an award of the construction permit. Compare Religious Broadcasting Network et al.*, 3 FCC Rcd 6216, 6217 (Rev. Bd. 1988) . . . . Also, in light of the circumstances of control relied on for concluding that Charles Ellis has control over the application, *Simla has failed to show by a preponderance of the evidence that Simla Ellis alone controls the application.*

17. Simla argues that the role of Charles Ellis has, to date, been "minimal," and that he will not participate in the operation of his wife's station. It is claimed that, because Charles Ellis is a consulting engineer, his assistance in the preparation of the application and obtaining the transmitter site was "the same work he would do for any other client." With respect to the use of joint funds, Simla claims that since she was applying as an individual applicant "it is only natural that [such funds] be used for that purpose." Concerning her husband's participation on settlement negotiations, it is asserted that such participation was "limited," and at the instigation of the other competing applicants (Simla Exceptions, paras. 13-14; 22; 28-31).

18. Based upon the foregoing findings and conclusions, we hold the ALJ should have added a real-party-in-interest issue against Simla. In prior proceedings, where the evidence taken on a comparative issue (*e.g.*, "integration") has collaterally raised basic qualifying issues, the Board has treated the comparative issue, but held that had the subject applicant not been eliminated, the Board would be compelled to remand the case under a basic qualifying issue. *See 62 Broadcasting, Inc.*, 4 FCC Rcd 1768, 1774 (Rev. Bd. 1989); *Dutchess Communications Corp.*, 101 FCC 2d 243, nn. 13, 31 (Rev. Bd. 1985); *Silver Star Communications - Albany, Inc.*, 3 FCC Rcd 6342, 6350 (Rev. Bd. 1988). While the ALJ here made specific adverse findings and conclusions about Charles Ellis' role in Simla's proposed facility without adding a real-party-in-interest issue, *see Tequesta Television, Inc.*, 2 FCC Rcd 7324 (Rev. Bd. 1987), we cannot disregard the ALJ's findings, for "[a]n initial decision is not a mere report to be arbitrarily disregarded. In the absence of review, the initial decision is the decision of the agency." *Seven Hills Television Company*, FCC 89I-32, released May 1, 1989 at n. 3 (quoting *Stereo Broadcasters, Inc.*, 652 F.2d 1026, 1030 (D.C. Cir. 1981)). Based on the record as reflected in the ALJ's findings and conclusions, we believe that the requisite *prima facie* case for issue enlargement would appear to be plainly established. Indeed, the facts here are substantially similar to those discussed in *Richard P. Bott, II*, 4 FCC Rcd 4924 (Rev. Bd. 1989), *rev. denied*, FCC 90-109, adopted March 28, 1990, where the Board and the

Commission refused to award more than 50% integration credit to an applicant, because it was clear that in prior broadcast operations, and in connection with that subject application, the husband had demonstrated a significant and active role, and both spouses had conducted themselves as if they were co-owners of their broadcast ventures. Thus, we specifically held in *Bott* that, had another applicant not prevailed on comparative grounds, we would have remanded the proceeding on a real-party-in-interest issue against the relevant applicant. 4 FCC Rcd at 4929-4930. In light of the substantial and material questions of fact raised with respect to the past, present, and future role of Charles Ellis in Simla's proposed facility, *see Perry Television*, *supra* (and cases cited at para. 18 *supra)*, and because we have also added a real party-in-interest issue against RBC and could not grant Simla's application without first determining whether it is basically qualified, this proceeding will also be remanded on the following issue:

> 2. To determine whether Charles Ellis is a real-party-in-interest in the application of Simla B. Ellis d/b/a Simla Broadcasting and the effect thereof on the qualifications of that applicant to be a Commission licensee.

19. ACCORDINGLY, IT IS ORDERED, That this proceeding is REMANDED to the Presiding Officer for a further hearing on the issues specified herein, and the preparation of a Supplemental Initial Decision.

FEDERAL COMMUNICATIONS COMMISSION

Eric T. Esbensen
Member, Review Board

FOOTNOTES

[1] At hearing, Basso could not explain whether his KBC stock, which is already pledged, could be unencumbered and made available to secure RBC financing (Tr. 216-218). Basso also testified that, based upon his understandings, if he were to repledge or sell assets which are already pledged toward that line of credit, it would be a default of his loan contract with FNBC (Tr. 222). Basso also understands that if he were to sell such assets without notifying FNBC and obtaining a release of security, KBC would be in default on its loan with FNBC (Tr. 223).

[2] The ALJ also determined that, at the time of hearing, apparently to fund the initial prosecution of RBC's application, cash deposits in the amount of some $16,600 had been made to the account of RBC: $8,300 was attributed to Byers and $8,300 was attributed to Lizotte. Also, each had signed a single note for a $20,000 bank loan to RBC. The $16,600 in seed money was loaned to RBC by Byers and Lizotte (Tr. 721), but only Lizotte had made a direct cash outlay; Byers obtained the funds for his $8,300 cash contribution through a loan from Lizotte (Tr. 592-94; 721-22, 725). The loan from Lizotte to Byers is interest bearing, but has no date certain for payment. Lizotte expects payment from Byers after the construction permit is granted and the station begins to receive earnings (Tr. 727). Further, Byers did not make any cash payments for his 500 shares of stock, but Byers believes that he paid for his stock in unspecified services rendered (Tr. 591). However, when Byers was cross-examined at hearing with respect to his role and proposed integration into the station, and apparently to bolster the *bona fides* of his integration pledge, the following colloquy ensued (Tr. 591-593; emphases added):

> [Simla Counsel]: How many shares of stock of RBC do you own?
>
> [Byers]: I own 500.
>
> [Counsel]: Have you paid for that stock?
>
> [Byers]: No, it wasn't necessary, in cash. I've paid for it in work ethic and stuff that I've done so far. I didn't buy it, per se.
>
> [Counsel]: Rayne Broadcasting has undoubtedly [incurred] some expenses to date. Have you contributed at all to the payment of those expenses?
>
> [Byers]: *I loaned $ 8, 300.* I signed a note at the bank for $10,000 based on my financial statement that I submitted to Mr. Seale.
>
> * * *
>
> [Counsel]: I'm somewhat confused now. I believe you said that you had loaned the company eighty-two hundred dollars.
>
> [Byers]: Eight thousand two hundred dollars.
>
> [Counsel]: Eight thousand two hundred dollars. And that you participated in signing a note for another $10,000.
>
> [Byers]: *The $ 8, 000 was before we got the money from the bank. The $ 8, 000 was my personal money that I had loaned to take care of expenses until we got the $20,000 from the bank.*

However, Lizotte testified differently during her cross-examination (Tr. 721-722; emphases added):

> [Simla Counsel]: Without getting into specifics, has there been any instance in which you have contributed more money than your 50 per cent obligation?
>
> [Lizotte]: Let me explain to you. I have contributed money and Mr. Byers has an I.O.U., a note to me for whatever money I put in for his share. So that money will be, I will get that money back, in other words.
>
> [Counsel]: I'm sorry . . .
>
> [Lizotte]: We have put in equal amounts in the form of he has signed a note to me for whatever money I have put in over and above his, in other words. So we're 50/50 equal partners there.
>
> [Counsel]: With his obligation, he has done that in a form to you.
>
> [Lizotte]: Correct.
>
> [Counsel]: So the cash, if any, that has gone into that account has come from you?
>
> [Lizotte]: Basically, yes.
>
> [Counsel]: Did Mr. Byers ever loan you money to Rayne Broadcasting Company?

> [Lizotte]: Yes, it was done, *I loaned money to Mr. Byers, Mr. Byers loaned the money to Rayne Broadcasting.* So we're both loaning money to Rayne Broadcasting, in other words.
>
> [Counsel]: I see. Do you recall the amount of that loan?
>
> [Lizotte]: Yes, I think it was $16,600. Total. It was $8,300 of his share. Right.
>
> [Counsel]: I see, *but that money actually came from you?*
>
> [Lizotte]: *Correct.*
>
> [Counsel]: To your knowledge, did that -- I'm trying to be clear on this point. *Is it your testimony that none of that money came from Mr. Byers' personal funds?*
>
> [Lizotte]: *No. That money came from my personal funds,* and Mr. Byers signed a note to me for $8,300.

The ALJ specifically found that Byer's testimony "was not true and correct and was misleading"; that "Byers dissembled in his testimony . . . ."; and that "Byers was misleading in his testimony about the nature and extent of his financial contribution [to RBC]." I.D., paras. 19, 48, 50. However, rather than add a misrepresentation/lack of candor issue, the ALJ merely determined that Byers was not a *bona fide* participant in RBC's proposed facility and awarded that applicant only 50% "integration into ownership" credit for Lizotte's proposal to work full-time at the station. In its exceptions, RBC only briefly deals with this aspect of the ALJ's findings in its footnote 15, there claiming that there "was simply nothing dishonest about Mr. Byers' testimony that he contributed 'personal funds' to RBC . . . . [T]he funds were Mr. Byers' 'personal funds' as he understood the term . . . even though he borrowed the funds from Ms. Lizotte . . . ." However, Byers' testimony appears to indicate that he was attempting to convince the ALJ that he was a *bona fide* participant in the RBC application.

In her exceptions before the Board, Simla did not assign error to the ALJ's failure to add a misrepresentation issue against RBC, nor does she seek to have this proceeding remanded to the presiding ALJ. At oral argument, counsel for Simla averred that "I can state categorically that we did not ask for a misrepresentation issue . . . ." (Tr. 1289). The Mass Media Bureau noted at oral argument that Byer's testimony was only in "one place inconsistent . . . and the inconsistency lies totally in the Judge's interpretation of what Mr. Byers meant by personal funds . . . ." (Tr. 1308). Accordingly, to the degree that the ALJ's findings and conclusions suggest misrepresentation or lack of candor on the part of Byers, absent specification of an appropriate issue, they are currently without validity. *See Silver Star, supra* (and cases cited therein); *Tequesta, supra.* Nevertheless, we do not estop ALJ's from adding issues, *sua sponte,* whenever substantial and material questions of truthfulness arise.

SEPARATE STATEMENT OF BOARD CHAIRMAN JOSEPH A. MARINO

In light of the careful review of the record set out in footnote 2, it is difficult to fathom the reluctance to also add a specific misrepresentation or lack of candor issue to the remanded proceeding. *Compare Global Information Technologies, Inc.,* 5 FCC Rcd 535, 536, Dissenting Statement (Rev. Bd. 1990). Given the fact that the ALJ has *already* determined that Byers falsely testified before the forum, it is manifest that a remand hearing here is legally compelled (*see* Board's *Order* at para. 20, and *West Coast Media Inc. v. FCC,* 695 F.2d 617, 620 (D.C. Cir. 1982)). Substantial and material questions of fact have been raised which, *prima facie,* cast doubt as to Byer's veracity. Accordingly, this case should also have been remanded to the presiding ALJ on the following issue:

> To determine whether Wendell M. Byers misrepresented facts or lacked candor in his testimony in the proceeding below, and the effect thereof on the qualifications of Rayne Broadcasting Co., Inc., to be a Commission licensee.

Indeed, the ALJ may wish to reconsider, on his own, the facts and circumstances present here, for, as pointed out in footnote 2, "we do not estop ALJ's from, *sua sponte,* adding issues whenever substantial and material questions of truthfulness arise."

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-110

In re Applications of

EMPIRE STATE BROADCASTING CORPORATION (WWKB) Buffalo, New York — File No. BR-840201WQ

For Renewal of License

BURSAM COMMUNICATIONS CORPORATION (WTHE) Mineola, New York — File No. BP-840430AC

For Construction Permit

ERRATUM

Released: June 4, 1990

By the Review Board:

Paragraph 19 of the *Decision*, FCC 90R-33, released May 14, 1990, is corrected to read as follows:

19. ACCORDINGLY, IT IS ORDERED, That the application of Bursam Communications Corporation (File No. BP-840430AC) IS DENIED, and the application of Empire State Broadcasting Corporation (File No. BR-840201WQ) for renewal of license for Station WWKB, Buffalo, New York IS GRANTED.

By Direction of the Board

Allan Sacks
Chief of Law

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-259

In re Applications of

SHILOH BROADCASTING, INC. (hereafter "Shiloh")	File No. BPH-880324MX
SAN JUANA ELVIRA TELLEZ (hereafter "Tellez")	File No. BPH-880324NH
Humberto L. Lopez & Minerva R. Lopez & Martin Martinez & Carlos Lopez d/b/a LOMAR SPANISH BROADCASTING (hereafter "Lomar")	File No. BPH-880324OC
PAUL GARZA, JR. (hereafter "Garza")	File No. BPH-880324OF

For Construction Permit for a
New FM Station on Channel 291A (106.1 MHz)
in Laredo, Texas

HEARING DESIGNATION ORDER

Adopted: May 1, 1990; Released: June 5, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Shiloh*. Information before the Commission indicates that Shiloh was organized and is affiliated with Sonrise Management Services ("Sonrise"). Sonrise has been the subject of numerous "real party-in-interest" issues added by presiding Administrative Law Judges in a number of mutually exclusive proceedings. For example, issues concerning Sonrise have been designated in each of the following proceedings:

City/State	Docket No.
Solona, Florida	87-464
Rockledge, Florida	87-556
Silver Springs, Florida	88-119
East Ridge, Tennessee	88-122
Des Moines, Iowa	88-238
Nags Head, North Carolina	88-277
Tyler, Texas	88-280
Raleigh, North Carolina	88-306
Sedona, Arizona	88-335
Mableton, Georgia	88-400
Evansville, Indiana	88-403
Swanton, Ohio	88-432
Atlantic City, New Jersey	88-433

Identical issues were specified in each of these proceedings: whether or not Sonrise was a real party in interest in the subject applicant, whether or not the applicant's organizational structure was a sham, and the effect thereof on the applicant's qualifications to be a Commission licensee. In each of the proceedings listed above, the Sonrise-affiliated applicant has dismissed its application rather than resolving these issues. These unresolved issues call into question Shiloh's qualification to be a Commission licensee. Therefore, such issues will be specified and tried against Shiloh in this proceeding.

3. Shiloh states in its timely-filed amendment, dated June 23, 1988, that its amended proposal fails to provide a 3.16 mV/m signal to the entire proposed city of license as required by Section 73.315(a) of the Commission's Rules. The FM Branch does not require waiver of this requirement unless the proposed 3.16 mV/m coverage falls below 80% of the area of the principal community. *See John R. Hughes*, 50 Fed. Reg. 5679 (Feb. 11, 1985). *See also Southwest Communications, Inc.*, released July 16, 1986 (letter from the Chief, FM Branch, reference 8920-HVT). Engineering study reveals that Shiloh's 3.16 mV/m contour is in substantial compliance with this requirement since Shiloh's contour would cover approximately 80% of the community of license. Accordingly, no waiver is required.

4. The applicants below have petitioned for leave to amend their applications on the dates shown. The accompanying amendments were filed after the last date for filing minor amendments as of right. Under 47 C.F.R. Section 1.65, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	AMENDMENTS FILED
Shiloh	November 22, 1988; December 12, 1988; December 22, 1988; December 28, 1988; January 9, 1989; January 13, 1989; May 31, 1989; June 22, 1989
Garza	October 4, 1988 (Engineering)

5. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and the applicants below have been unsuccessful. Accordingly, since no determination has been received as to whether the antennas proposed by Tellez and by Lomar would constitute hazards to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

6. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

7. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of Shiloh.

2. To determine whether Shiloh's organizational structure is a sham.

3. To determine, from the evidence adduced pursuant to Issues 1 and 2 above, whether Shiloh possesses the basic qualifications to be a licensee of the facilities sought herein.

4. To determine whether there is a reasonable possibility that the tower heights and locations proposed by Tellez and Lomar would constitute hazards to air navigation.

5. To determine which of the proposals would, on a comparative basis, best serve the public interest.

6. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

9. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Shiloh and Garza ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

10. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

11. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

12. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

13. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-262

In re Applications of

Ledyard Radio Limited Partnership (hereafter "LRLP")	File No. BPH-880714MM
The Taft Group, Inc. (hereafter "Taft")	File No. BPH-880714MP
Ledyard Broadcasting Company (hereafter "LBC")	File No. BPH-880714MQ
Clark F. Smidt (hereafter "Smidt")	File No. BPH-880714NH
Gloria E. Fuller, d/b/a Ledyard Community Broadcasting (hereafter "LCB")	File No. BPH-880714NL
Ledyard Connecticut FM Radio Limited Partnership (hereafter "LCRLP")	File No. BPH-880714NX

For Construction Permit
for a New FM Station on Channel 293A
in Ledyard, Connecticut

HEARING DESIGNATION ORDER

Adopted: May 2, 1990; Released: June 5, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *LCB.* An engineering study reveals that LCB incorrectly calculated the antenna height above average terrain (HAAT). Using the applicant's eight radial values for height of radiation center above average terrain, our study determined the HAAT to be 89.7 meters. The applicant indicated an HAAT value of 88 meters in Item 7(b)(3) of Section V-B of the application. In this case, the discrepancy is neither a tenderability nor an acceptability defect insofar as the minimal nature of the defect, appears attributable to the imprecision inherent in manually ascertaining from the Commission's propagation curves the exact radiation value corresponding to the maximum permitted under the rules. Therefore, the discrepancy may be resolved by an amendment.

3. LCB petitioned for leave to amend its application on May 15, 1989. The accompanying amendment was filed after December 19, 1988, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

4. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

5. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

7. IT IS FURTHER ORDERED, That LCB will be required to file within 30 days of the release of this Order an amendment correcting the engineering discrepancy detailed in paragraph 2 with the presiding Administrative Law Judge.

8. IT IS FURTHER ORDERED, That the petition for leave to amend filed by LCB IS GRANTED, and the corresponding amendment IS ACCEPTED to the extent indicated herein.

9. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

10. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file

with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

11. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-256

In re Applications of

DOROTHY C. CORDELL (hereafter "Cordell")	File No. BPH-880420MC
R. JOHN RIGGINS d/b/a OLATHE COMMUNICATIONS (hereafter "Olathe")	File No. BPH-880421MF
COMMUTER BROADCASTING, INC. (hereafter "Commuter")	File No. BPH-880421MK
RICHARD P. BOTT, II (hereafter "Bott")	File No. BPH-880421NG
JAMES D. HARBART AND MARIANNE S. HARBART, JOINT TENANTS WITH RIGHT OF SURVIVORSHIP (hereafter "Harbart")	File No. BPH-880421NH
PAMELA R. JONES (hereafter "Jones")	File No. BPH-880421NK
PRAIRIE ROSE BROADCASTING, LIMITED PARTNERSHIP (hereafter "Prairie Rose")	File No. BPH-880421NQ
M. C. BROADCASTING COMPANY, L. P. (hereafter " M. C. Broadcasting")	File No. BPH-880421NW

For Construction Permit
for a New FM Station on Channel 222A (92.3 MHz)
in Olathe, Kansas

HEARING DESIGNATION ORDER

Adopted: May 2, 1990; Released: June 5, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.[1]

2. *Olathe*. The height above ground level (AGL) for Olathe's proposed site is listed in Section V-B, Item 7(a)(2) of its application as 104 meters, and the proposed height above mean sea level (AMSL) is listed in Item 7(a)(3) as 415 meters. These values conflict with the respective values of 80.8 meters and 392 meters on file with the FAA. Accordingly, Olathe shall file an amendment with the presiding Administrative Law Judge, within 30 days of the release of this Order, which corrects or clarifies these discrepancies. In addition, an air hazard will be specified below.

3. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and the applicants below have been unsuccessful. Accordingly, since no determination has been received as to whether the antennas proposed by Cordell, Commuter, Bott, Jones, and M. C. Broadcasting would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

4. The applicants below have petitioned for leave to amend their applications on the dates shown. The accompanying amendments were filed after the last day for filing minor amendments as of right. Under 47 C.F.R. § 1.65 the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Thereafter, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	DATES FILED
Bott	September 5, 1989
Harbart	August 1, 1989
Jones	March 14, 1989; March 19, 1990
Prairie Rose	January 5, 1989, February 22, 1989

5. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

6. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower heights and locations proposed by Cordell, Olathe, Commuter, Bott, Jones, and M. C. Broadcasting would constitute hazards to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

8. IT IS FURTHER ORDERED, That Olathe shall file the clarifying amendment requested in paragraph 2 hereinabove with the presiding Administrative Law Judge within 30 days of the release of this Order.

9. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

10. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Bott, Harbart, Jones, and Prairie Rose ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

11. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

12. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

13. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTE

[1] On November 12, 1989, Kansas Radio Group, Inc. (BPH-880421NB) requested the withdrawal of its application. The request was voluntary and in accordance with our requirements governing such matters. Accordingly, the application was dismissed by Commission letter dated March 13, 1990.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-291

In re Applications of

Donald G. Jones (hereafter "Donald") File No.BPH-881221MR

Carlinville Broadcasting Corp. (hereafter "CBC") File No.BPH-881222MA

For Construction Permit
for a New FM Station on Channel 240A
in Carlinville, Illinois

HEARING DESIGNATION ORDER

Adopted: May 10, 1990; Released: June 5, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. CBC petitioned for leave to amend its application on April 19, 1990. The accompanying amendment was filed after April 10, 1989, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

3. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

4. CBC principals Randal J. Miller, Cathaleen R. Miller, and Lawrence Travis are also principals of Virden Broadcasting Corp., licensee of WRVI-FM (Virden, Illinois). When the instant application was filed, there was 3.16 mV/m (70dBu) overlap between the Carlinville proposal and WRVI-FM. Prior to the filing of the Carlinville application however, WRVI-FM filed an application to change its transmitter site (File No. BPH-880504IB) and CBC filed a timely request for waiver of the Commission's duopoly rules on April 10, 1989. The WRVI-FM modification application, which removed any 70dBu overlap, was granted on September 28, 1988, and promptly constructed, as WRVI is now operating from that site pursuant to program test authority under the filing of an application for license to cover (File No. BLH-890404KB). Because the grant and construction of the WRVI-FM modification application removed any duopoly concerns, CBC's April 10, 1989 waiver request will be dismissed as moot.

5. The Federal Aviation Administration has indicated that the site on which Donald proposes to locate his antenna is a hazard to air navigation. Accordingly, an issue with respect thereto will be included and the FAA made a party to the proceeding.

6. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and applicant CBC have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by CBC would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

7. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by Donald and CBC would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

8. IT IS FURTHER ORDERED, That the petition for leave to amend filed by CBC IS GRANTED, and the corresponding amendment IS ACCEPTED to the extent indicated herein.

9. IT IS FURTHER ORDERED, That CBC's April 10, 1989 request for waiver of the Commission's duopoly rules (47 C.F.R. 73.3555(A)(3)) IS DISMISSED AS MOOT.

10. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

11. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

12. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

13. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-269

In re Applications of

COMMUNICATIONS VENTURES, LIMITED PARTNERSHIP (hereafter "CVLP") File No. BPH-880714MF

PLATTE BROADCASTING COMPANY, INC. (hereafter "Platte") File No. BPH-880714NY

For Construction Permit
for a New FM Station on Channel 293A
in Plattsmouth, Nebraska

HEARING DESIGNATION ORDER

Adopted: May 7, 1990; Released: June 5, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Areas & Populations*. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

3. Platte filed a waiver request of § 73.207 of the Commission's Rules. Specifically, Platte indicated that it was short-spaced to two applications for a new FM station in Omaha, Nebraska, Channel 290A (BPH-870918NP and BPH-870917MC); three other competing Omaha applicants were not short-spaced. This conclusion was consistent with the findings of our engineering analysis conducted at the time of Platte's filing. However, since our initial study took place, the Commission granted, on February 5, 1990, one of the three applicants (BPH-870918MB) to which Platte was not short-spaced. Therefore, the waiver request will be dismissed as moot.

4. Notwithstanding the discussion in paragraph 3 above, both applications here are short-spaced to a pending Rule Making proposal (Rule Making 7094, MM Docket 89-595) to upgrade an Omaha, Nebraska allotment from Channel 290A to Channel 290C2. The Rule Making also proposes to alleviate this short-spacing by changing the Plattsmouth allotment from Channel 293A to Channel 295A. Accordingly, while the applicants for the Plattsmouth frequency will be allowed to proceed to comparative hearing, it shall be ordered that any construction permit awarded as a result of this proceeding shall be made contingent on the disposition of MM Docket 89-595.

5. *Platte*. In the engineering section of its application, Platte indicates that the coordinates of the transmitter site are 41 degrees, 01 minutes and *33* seconds North Latitude; 95 degrees, 54 minutes and 00 seconds West Longitude. Platte further specifies that it proposes to co-locate on the tower used by AM Radio Station KOTD, Plattsmouth, Nebraska. However, in reviewing the authorization of KOTD's construction permit and license, it is clear that the FCC and the FAA approved the application at the following coordinates: 41 degrees, 01 minutes and *35* seconds North Latitude; 95 degrees, 54 minutes and 00 seconds West Longitude. This discrepancy must be clarified. A corrective amendment must be filed within 30 days of the release of this Order.

6. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and Platte have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by Platte would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

7. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by the Platte would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in the light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

9. IT IS FURTHER ORDERED, That, the request for waiver of Section 73.207 of the Commission's Rules filed by Platte IS HEREBY DISMISSED AS MOOT.

10. IT IS FURTHER ORDERED, That, in the event a construction permit is granted to any applicant in this proceeding, it shall be conditioned upon the outcome of MM Docket 89-595.

11. IT IS FURTHER ORDERED, That Platte shall submit the amendment specified in paragraph 5 above to the presiding Administrative Law Judge within 30 days of the release of this Order.

12. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

13. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

14. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

15. IT IS FURTHER ORDERED, That the applicants herein shall pursuant to Section 311 (a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-270

In re Applications of

Eastwood Baptist Church (hereafter "Eastwood")	File No. BPH 880601MQ
Tara L. Vanarsdel (hereafter "Tara")	File No. BPH 880601MS
H & H Broadcasting, Inc. (hereafter "H & H")	File No. BPH 880601MT
Betty Ann Demaree (hereafter "Betty")	File No. BPH 880602NC
Righteous Radio, Inc. (hereafter "Righteous")	File No. BPH 880602NQ
P.K.L. Partnership (hereafter "PKL")	File No. BPH 880602NX
John M. Singer (hereafter "John")	File No. BPH 880602NY
Pamela R. Jones (hereafter "Pamela")	File No. BPH 880602OK

For Construction Permit
for a New FM Station on Channel 287A
in Bixby, OK

HEARING DESIGNATION ORDER

Adopted: May 7, 1990; Released: June 5, 1990

By the Chief, Audio Services Division:

1.The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. Righteous, John, and Pamela petitioned for leave to amend their applications after the last day for filing amendments as of right, September 9, 1988. The subject amendments were accompanied by the good cause showing required by 47 C.F.R. § 73.3522(a)(2); consequently, the amendments are accepted for filing. However, an applicant may not improve its comparative advantage after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed. The above referenced amendments were filed as follows:

APPLICANT	AMENDMENTS FILED
1. Righteous	June 13, 1989
2. John	April 27, 1989
3. Pamela	March 14, 1989, March 19, 1990

3. The Commission requires that if there will be five or more fulltime station employees, the applicant must complete and file Section VI of Form 301, and supply a statement detailing hiring and promotion policies for women and each minority group whose representation in the available labor force is five percent or greater in the proposed service area. Although Betty, Righteous, and PKL have filed such statements, they are deficient. Betty and Righteous have not listed an appropriate entity from which they will recruit women applicants when job vacancies occur[1]. PKL has not listed appropriate entities from which it will recruit women and minority applicants when job vacancies occur. Accordingly, Betty, Righteous, and PKL will be required to file amended EEO programs with the presiding Administrative Law Judge, or an appropriate issue will be specified by the Judge.

4. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

5. Righteous purports to list the media interests of Kenneth A. Staley, one of its principals, in "Exhibit Three" of its application. However, no Exhibit Three was included in the application. Therefore, Righteous must file an amendment to correct this deficiency.

6. Information before the Commission indicates that Righteous was organized and is affiliated with Sonrise Management Services ("Sonrise"). Sonrise has been the subject of numerous "real party-in-interest" issues added by presiding Administrative Law Judges in a number of mutually exclusive proceedings. For example, issues concerning Sonrise have been designated in each of the following proceedings:

City/State	Docket No.
Solona, Florida	87-464
Rockledge, Florida	87-556
Silver Springs, Florida	88-119
East Ridge, Tennessee	88-122
Des Moines, Iowa	88-238
Nags Head, North Carolina	88-277
Tyler, Texas	88-280
Raleigh, North Carolina	88-306
Sedona, Arizona	88-335
Mableton, Georgia	88-400
Evansville, Indiana	88-403
Swanton, Ohio	88-432
Atlantic City, New Jersey	88-433

7. Identical issues were specified in each of these proceedings: whether or not Sonrise was a real party-in-interest in the subject applicant, whether or not the applicant's organizational structure was a sham, and the effect thereof on the applicant's qualifications to be a Commission licensee. In each of the proceedings listed above, the Sonrise-affiliated applicant has dismissed its application rather than resolving these issues. These unresolved issues call into question Righteous' qualifications to be a Commission licensee. Therefore, such issues will be specified and tried against Righteous Radio, Inc. in this proceeding.

8. Pursuant to Section 1.65 of the Commission's rules, applicants are required to keep the Commission apprised of the status of their broadcast interests throughout the application process. Principals of PKL are principals in a limited partnership applying for a new FM station in Beaumont, Texas which was designated for comparative hearing on July 12, 1988 in MM Docket 88-358. Jones has applied for FM stations in Modesto, California and Fort Wayne, Indiana, both of which were designated for comparative hearing on February 7, 1990 in MM Docket 89-68 and February 27, 1990, in MM Docket 89-109, respectively. Neither PKL nor Jones has informed the Commission of these events, necessitating the filing of amendments by both.

9. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and applicants Eastwood, Tara, H&H, Betty, PKL, and John have been unsuccessful. Accordingly, since no determination has been received as to whether the antennae proposed by these applicants would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

10. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of Righteous.

2. To determine whether Righteous' organizational structure is a sham.

3. To determine, from the evidence adduced pursuant to Issues 1 and 2 above, whether Righteous possesses the basic qualifications to be a licensee of the facilities sought herein.

4. To determine whether there is a reasonable possibility that the tower height and location proposed by Eastwood, Tara, H&H, Betty, PKL and John would constitute a hazard to air navigation.

5. To determine which of the proposals would, on a comparative basis, best serve the public interest.

6. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

9. IT IS FURTHER ORDERED That the petitions for leave to amend filed by Righteous, John and Pamela ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

10. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, Righteous, PKL, and Betty shall submit Section VI information in accordance with the requirement of Section 73.2080(c) of the Commission's Rules to the presiding Administrative Law Judge.

11. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by John, Righteous, and Pamela ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

12. IT IS FURTHER ORDERED, That Righteous shall file an amendment detailing the media interests of its principal, Kenneth A. Staley, with the presiding Administrative Law Judge within 30 days of the release of this Order.

13. IT IS FURTHER ORDERED, That PKL and Jones shall file an amendment detailing the current status of their media interests with the presiding Administrative Law Judge within 30 days of the release of this Order.

14. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

15. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

16. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

17. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTE

[1] One organization listed by Betty, the "Lioness Club", is unfamiliar to the staff. If this organization satisfies the Commission's female recruitment source requirement, Betty may amend its EEO program to describe the organization.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-272

In re Applications of

CAROLYN RING (hereafter "Ring")	File No. BPH-880505MG
STARBOARD PRODUCTIONS (hereafter "Starboard")	File No. BPH-880505MI
Alfred R. Francoeur, Janet A. Francoeur, d/b/a FRANCOEUR RADIO PARTNERSHIP (hereafter "Francoeur")	File No. BPH-880505MU
TVB BROADCASTING COMPANY (hereafter "TVB")	File No. BPH-880505MY
JON E. PARADISE (hereafter "Paradise")	File No. BPH-880505NC
THOMAS G. DAVIS & MARTIN S. SHAPIRO, JOINT TENANTS (hereafter "Davis")	File No. BPH-880505NJ
HAMPTON BROADCASTING (hereafter "Hampton Broadcasting")	File No. BPH-880505OH
HAMPTON BROADCASTING COMPANY (hereafter "HBC")	File No. BPH-880505OQ
JANE E. NEWMAN (hereafter "Newman")	File No. BPH-880505OY
OCEANSIDE BROADCASTING COMPANY (hereafter "Oceanside")	File No. BPH-880505PS
VEZINA BROADCASTING, INC. (hereafter "Vezina")	File No. BPH-880505PT

For Construction Permit
for a New FM Station on Channel 271A (102.1 MHz)
in Hampton, New Hampshire

HEARING DESIGNATION ORDER

Adopted: May 7, 1990; Released: June 5, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Vezina.* Information before the Commission indicates that Vezina was organized and is affiliated with Sonrise Management Services ("Sonrise"). Sonrise has been the subject of numerous "real party-in-interest" issues added by presiding Administrative Law Judges in a number of mutually exclusive proceedings. For example, issues concerning Sonrise have been designated in each of the following proceedings:

City/State	Docket No.
Solona, Florida	87-464
Rockledge, Florida	87-556
Silver Springs, Florida	88-119
East Ridge, Tennessee	88-122
Des Moines, Iowa	88-238
Nags Head, North Carolina	88-277
Tyler, Texas	88-280
Raleigh, North Carolina	88-306
Sedona, Arizona	88-335
Mableton, Georgia	88-400
Evansville, Indiana	88-403
Swanton, Ohio	88-432
Atlantic City, New Jersey	88-433

Identical issues were specified in each of these proceedings: whether or not Sonrise was a real party-in-interest in the subject applicant, whether or not the applicant's organizational structure was a sham, and the effect thereof on the applicant's qualifications to be a Commission licensee. In each of the proceedings listed above, the Sonrise-affiliated applicant has dismissed its application rather than resolving these issues. These unresolved issues call into question Vezina's qualification to be a Commission licensee. Therefore, such issues will be specified and tried against Vezina in this proceeding.

3. The applicants below have petitioned for leave to amend their application on the dates shown. The accompanying amendments were filed after the last date for filing amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	AMENDMENTS FILED
Paradise	August 9, 1989
Davis	October 31, 1989; March 8, 1990
Starboard	July 26, 1989
HBC	June 6, 1989
Oceanside	January 9, 1990
Vezina	November 21, 1988; November 22, 1988; December 5, 1988

4. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

5. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of Vezina.

2. To determine whether Vezina's organizational structure is a sham.

3. To determine, from the evidence adduced pursuant to Issues 1 and 2 above, whether Vezina possesses the basic qualifications to be a licensee of the facilities sought herein.

4. To determine which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

7. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Paradise, Davis, Starboard, HBC, Oceanside, and Vezina ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

8. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

9. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

10. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-273

In re Applications of

OLIVER BREWER, *et al.*, d/b/a TRUSSVILLE BROADCASTING (hereafter "Trussville") File No. BPH-880519MH

LAWSON COMMUNICATIONS, INC. (hereafter "Lawson") File No. BPH-880519MK

WILLIAM E. BENNS, IV (hereafter "Benns") File No. BPH-880519MZ

STANTON BROADCASTING CORPORATION (hereafter "Stanton") File No. BPH-880519NX

DOBSON BROADCASTING CO. (hereafter "Dobson") File No. BPH-880519OH

For Construction Permit
for a New FM Station on Channel 290A
in Trussville, Alabama

HEARING DESIGNATION ORDER

Adopted: May 7, 1990; Released: June 5, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. Information before the Commission indicates that Lawson was organized and is affiliated with Sonrise Management Services ("Sonrise"). Sonrise has been the subject of numerous "real party-in-interest" issues added by presiding Administrative Law Judges in a number of mutually exclusive proceedings. For example, issues concerning Sonrise have been designated in each of the following proceedings:

City/State	Docket No.
Solona, Florida	87-464
Rockledge, Florida	87-556
Silver Springs, Florida	88-119
East Ridge, Tennessee	88-122
Des Moines, Iowa	88-238
Nags Head, North Carolina	88-277
Tyler, Texas	88-280
Raleigh, North Carolina	88-306
Sedona, Arizona	88-335
Mableton, Georgia	88-400
Evansville, Indiana	88-403
Swanton, Ohio	88-432
Atlantic City, New Jersey	88-433

Identical issues were specified in each of these proceedings: whether or not Sonrise was a real party-in-interest in the subject applicant, whether or not the applicant's organizational structure was a sham, and the effect thereof on the applicant's qualifications to be a Commission licensee. In each of the proceedings listed above, the Sonrise-affiliated applicant has dismissed its application rather than resolving these issues. These unresolved issues call into question Lawson's qualification to be a Commission licensee. Therefore, such issues will be specified and tried against Lawson in this proceeding.

3. *Financial.* The material submitted by the applicant below does not demonstrate its financial qualifications. Accordingly, an issue will be specified concerning the following deficiency:

APPLICANT	DEFICIENCY
Trussville	Applicant certifies that it is not financially qualified but will file certification as amendment to the application. No amendment was filed.

4. The Commission requires that if there will be five or more fulltime station employees, the applicant must complete and file Section VI of Form 301, and supply a statement detailing hiring and promotion policies for women and each minority group whose representation in the available labor force is five percent or greater in the proposed service area. Although Stanton and Dobson have filed such statements, both statements are deficient. Stanton has not listed any female-oriented or minority-oriented recruitment sources. Dobson has listed two organizations as recruitment sources. One of the recruitment sources listed is minority-oriented, and the other is not a specific identifiable, female-oriented recruitment source.[1] Accordingly, Stanton and Dobson will be required to file amended EEO programs with the presiding Administrative Law Judge, or an appropriate issue will be specified by the Judge.

5. The applicants below have petitioned for leave to amend their applications on the dates shown. The accompanying amendments were filed after the last date for filing amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its com-

parative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	AMENDMENTS FILED
Lawson	November 23, 1988; May 9, 1989; June 7, 1989; September 13, 1989; October 30, 1989
Benns	January 9, 1989; January 11, 1989; February 7, 1989; June 6, 1989
Dobson	October 30, 1989

6. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and Benns have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by Benns would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

7. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

8. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

9. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of Lawson.

2. To determine whether Lawson's organizational structure is a sham.

3. To determine, from the evidence adduced pursuant to Issues 1 and 2 above, whether Lawson possesses the basic qualifications to be a licensee of the facilities sought herein.

4. To determine with respect to Trussville, whether the applicant is financially qualified.

5. To determine whether there is a reasonable possibility that the tower height and location proposed by Benns would constitute a hazard to air navigation.

6. To determine which of the proposals would, on a comparative basis, best serve the public interest.

7. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

10. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, Stanton and Dobson shall submit Section VI information in accordance with the requirements of Section 73.2080(c) of the Commission's Rules to the presiding Administrative Law Judge.

11. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Lawson, Benns, and Dobson ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

12. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

13. IT IS FURTHER ORDERED, That, in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

14. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

15. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTE

[1] The organization Dobson lists as a recruitment source, "BPW," is unfamiliar to the Commission's staff. In the event that this organization satisfies the female EEO recruitment requirement, Dobson may amend its EEO program to describe the organization.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

American Telephone and Telegraph Company	Transmittal Nos. 2221, 2227, 2228, and 2229

Revisions to Tariff F.C.C. No. 12

ORDER

Adopted: May 24, 1990; Released: May 25, 1990

By the Chief, Common Carrier Bureau:

1. Transmittals 2221, 2227, 2228, and 2229 introduce Virtual Telecommunications Network Service (VTNS) Options 41, 42, 43, and 44, respectively. These options are described as generally available offerings designed and engineered for voice and data communications service between stations in the United States, Puerto Rico, the U.S. Virgin Islands, and specific international locations. Following substantially complete installation, the rates for Options 41, 42, and 44 are stabilized throughout a five-year term; for Option 43, the rates are stabilized for three years. (*See* Tr. 2221 at Section 7.43; Tr. 2227 at Section 7.44; Tr. 2228 at Section 7.45; Tr. 2229 at Section 7.46.)

2. The basic charge for VTNS under Option 41 is $319,000 per month; for Option 42, the charge per month is $113,435. The proposed monthly charge for Option 43 is $193,000, with a substantial discount if ordered before December 31, 1990, and initiated by May 1, 1991, while the basic charge for Option 44 is $734,273 per month. Tr. 2221 D&J at 5; Tr. 2227 at Section 7.44.2.A; Tr. 2228 at Section 7.45.2.A.; Tr. 2229 at Section 7.46.2.A. Also, volume pricing plans containing discounts for domestic and international use under specified rate schedules apply under Options 41, 42, and 44.

3. On April 26, and 30, 1990, US Sprint Communications Company Limited Partnership (Sprint) filed petitions to reject, or alternatively, to suspend and investigate the instant transmittals. AT&T responded in replies filed on April 30, and May 8, 1990.

4. Sprint argues that AT&T failed to demonstrate that Options 41 through 44 are integrated service packages that are "unlike" AT&T's other component services. Moreover, Sprint contends, AT&T's proposal of 44 individual VTNS offerings makes clear that such offerings are designed for one customer. Additionally, Sprint maintains that various specifications in the transmittal also effectively restrict the offering to one customer. Therefore, Sprint asserts, the Commission should order AT&T to offer these rates under a generally available tariff, as in the case of the individual case basis (ICB) rates for the local exchange carriers' DS3 service. *Id.* at 2-4. Sprint also alleges that AT&T's cost support for Options 41 through 44 is "seriously deficient" and incorporates by reference the arguments against VTNS Options 17, 18, and 19, found in AT&T Transmittals 1810, 1826, and 1832, respectively. *Id.* at 4.

5. AT&T replies that the Communications Act prohibits discrimination only between "like" services, and the Commission has held that Tariff 12 integrated service packages are not "like" the component services offered in separate tariffs. Therefore, AT&T asserts, the rates in Options 41, 42, 43, and 44 are not unjustly discriminatory. Reply at 3-4. AT&T also states that the Commission has consistently found AT&T's standard, Commission-sanctioned cost systems sufficient to support AT&T's Tariff 12 filings. These methods, contends AT&T, satisfy the requirements of Section 61.38 of the Commission's Rules. *Id.* at 7-9.

6. The Common Carrier Bureau has reviewed AT&T Transmittal Nos. 2221, 2227, 2228, and 2229, Sprint's petitions, and related pleadings. We conclude that no compelling argument has been presented that these tariffs are so patently unlawful as to warrant rejection, and that an investigation is not warranted at this time.

7. Accordingly, IT IS ORDERED that the petitions to reject, suspend, or investigate American Telephone and Telegraph Company Tariff F.C.C. No. 12, Transmittal Nos. 2221, 2227, 2228, and 2229, filed by US Sprint Communications Company Limited Partnership, ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-279

In re Applications of

POUGHKEEPSIE BROADCASTING LIMITED	File No. BPH-870331OR
WICRAE EQUITIES LIMITED	File No. BPH-870414KH
POUGHKEEPSIE COMMUNICATIONS LIMITED PARTNERSHIP	File No. BPH-870415KT
THE KINNEY GROUP	File No. BPH-870415ME

For Construction Permit for a
New FM Station, Channel 241A,
Poughkeepsie, New York

Appearances

Lee J. Peltzman and *B. Jay Baraff*, on behalf of Poughkeepsie Broadcasting Limited; *Thomas J. Hutton* and *Kevin F. Reed*, on behalf of Wicrae Equities Limited; *John J. Schauble* and *Lewis I. Cohen*, on behalf of Poughkeepsie Communications Limited Partnership; and *Jerome S. Boros*, *Jerold L. Jacobs*, and *Jerome S. Silber*, on behalf of The Kinney Group.

DECISION

Adopted: March 15, 1990; Released: June 6, 1990

By the Review Board: BLUMENTHAL and ESBENSEN; MARINO (Chairman) dissenting with Statement.

Board Member ESBENSEN:

1. The Review Board has before it the *Initial Decision*, 4 FCC Rcd 6543 (1989)(I.D.), of Administrative Law Judge Edward J. Kuhlmann (ALJ) granting the application of Poughkeepsie Communications Limited Partnership (PCLP) for a construction permit to establish a new FM broadcast station on Channel 241A at Poughkeepsie, New York, and denying the competing applications of Poughkeepsie Broadcasting Limited (PBL), Wicrae Equities Limited (Wicrae), and The Kinney Group (Group). The ALJ held that PCLP prevailed under the standard comparative issue because only that applicant was entitled to receive 100% credit for proposed ownership integration into station management. The proceeding is now before the Board on exceptions filed by the applicants and replies thereto. Based upon our review of the pleadings and the hearing record below, and having heard oral argument on January 19, 1990, we reverse the ALJ's ultimate grant to PCLP and determine that Wicrae is the preferred applicant.

POUGHKEEPSIE COMMUNICATIONS LIMITED PARTNERSHIP

2. PCLP is purported to be a limited partnership with (1) a sole "general" partner, Thomas H. Cooper, holding a 10% overall equity interest, and (2) ten "limited" partners: Jean Wells (17.25% equity interest), Victor Demming (8.5%), Samuel T. Allen, Jr. (8.5%), Samuel B. Taylor (8.5%), Garvey Clark (8.5%), Ronald Morris (8.5%), William Froelich (8.5%), Robert Nash (8.5%), Kelly and Brenda J. Murphy (8.5%), and Harold D. Span (4.25%). I.D., para. 31. The ALJ awarded PCLP 100% ownership integration credit for Cooper's proposal to work fulltime as general manager of the station. The exceptors urge that PCLP is no more than a "sham" applicant, entitled to receive no integration credit whatever.

3. The record reveals that the PCLP application was initiated in March 1987, when communications counsel telephoned "limited" partner Jean Wells to apprise her that an FM channel in Poughkeepsie was available. Tr. 1100-01. In response, Wells investigated the Poughkeepsie market, contacted numerous potential investors, and chaired a meeting with them some two weeks before the "A" cut-off date for filing competing applications. Tr. 1106-09. Thomas Cooper was recommended to "limited" partner Wells by one Victor Morris, who had himself earlier declined to become the sole "general" partner in PCLP (and is not a principal of PCLP). Tr. 1121; 1007. Wells had never met Cooper, but recognized his name in connection with the New York State Martin Luther King, Jr. Commission. Following Victor Morris' declination of the "general" partnership of PCLP, Wells telephoned Cooper on April 12, 1987 and informed him:

> that there was a limited partnership that had been formed to seek the construction permit for a radio station in Poughkeepsie, and his name had been given to me, and that he had come highly recommended by a couple of people. I explained to him the nature of the partnership, what his involvement would be in return for his services, and that he would be the full-time general manager. That's about it.

Tr. 1128-29; *see also* Tr. 941, 946, 1049. Wells did not specify any duties that Cooper would be required to perform, but informed him that he would be expected to become general manager of the proposed station, Tr. 1131-32, and that he would have to move to Poughkeepsie. Tr. 1129.

4. It was Cooper's understanding that he would not have any financial obligation to the partnership arising from his acceptance of the sole "general" partnership of PCLP. Thus:

[Counsel]: So you haven't put a dime into this application, then. Is that correct?

[Cooper]: This is correct.

[Counsel]: And you don't intend to in the future, do you?

[Cooper]: This is correct.

Tr. 1025. Cooper had earlier testified to his understanding, *solely* from PCLP counsel, that the financial contribution of the "limited" partners was limited to $90,000 for prosecuting the application, [1] and that the "limited" partners were financially able to meet these expenses. Tr. 985. Cooper did not seek to verify their alleged financial abilities. Although Cooper said he recognized that, as sole "general" partner, he would be liable for any losses or expenses incurred by PCLP beyond the initial contributions of the "limited" partners, he did not inquire about how high those losses might go, and spoke to neither a lawyer nor an accountant nor anyone else about his potential liability. [2] Indeed, Cooper did not know, for example, who was liable for the engineering fees already incurred. Tr. 988. Nor did he understand that Wells, who had offered him the position, had no liabilities for the station on her own. [3, 4]

5. Moreover, the record reflects that Cooper agreed to be the "general" partner two days after his brief phone conversation with Wells. On April 14, 1987, Cooper flew to Washington to meet PCLP counsel, and:

[PBL Counsel]: When you flew down to Washington to see [PCLP counsel], you knew that you had been asked to inquire into a limited partnership as a general partner, you knew one of the limited partners, though you didn't know her specific background, and you didn't know any of the other limited partners, you didn't know how much it would cost to build a station that she had spoken to you about, you didn't know where the money was going to come from to do it, and you didn't know what your interest was to be. Is that correct?

* * *

[ALJ]: Are any of these incorrect?

[Cooper]: Yes, the statement that I *knew* Ms. Wells is incorrect.

[PBL Counsel]: I said you didn't know her specifically. You did not know her at all, I gather. Correct?

[Cooper]: *Idid not know her at all.*

[PBL Counsel]: I mean, but you only knew one of the names. *You didn' t even know the other names.*

[Cooper]: *That is correct.*

[PBL Counsel]: And the one that you knew, you didn't know her.

[Cooper]: I knew the name. *I did not know her, and I did not know any of the other limited partners.*

* * *

[PBL Counsel]: Did you think it was the least bit weird that the limited partners were people who were willing to go into business with you and finance an enterprise when they had never met you, and only one person had spoken to you in a conversation for 15 minutes?

[Cooper]: I thought it was interesting.

[PBL Counsel]: Wasn't it a little unusual?

[Cooper]: It never happened to me before.

[PBL Counsel]: Well, do you think, if it had been the reverse, that you would have done it?

* * *

[Cooper]: *Probably not.*

Tr. 1062, 1072 (emphases added). Not only did Cooper not know any of the "limited" partners (or their financial abilities, background, character, *etc.*), he did not negotiate his equity share or other financial benefits with the partners, because as he explained to the ALJ (Tr. 976):

[Counsel]: When you spoke to [PCLP Counsel] about completing the application, did you ask why you were getting 10 percent?

[Cooper]: The way the question is phrased, it would be difficult for me to answer that.

[ALJ]: Why? I should think that is the most logical thing that would have come to your mind: why you were getting 10 percent and this person named Wells getting 13.5 – someone you didn't even know.

[Cooper]: Your Honor, you are correct. But I had to take into consideration that I put absolutely nothing in terms of money into this enterprise. And quite frankly, 10 percent was satisfactory to me.

6. Although PCLP seeks an extrapolated 100% quantitative ownership integration credit, based solely upon Cooper's 10% equity share as its "general" partner, the Commission has recognized:

[S]ometimes an applicant may present a favorable formal structure on paper in order to gain a quantitative integration preference, but in reality that structure is not an accurate depiction of how the

licensee's affairs will be managed. Thus, limited partners or non-voting stockholders, although nominally without influence over the applicant, may actually participate in or control the applicant's decision-making process. In those instances, the Commission disregards the applicant's formal ownership structure and treats the nominally passive owners (that is, non-voting stockholders or limited partners) as if they were active in the management of the applicant -- and thus relevant to the Commission's integration analysis. *See e.g., Signal Ministries, Inc.*, 104 FCC 2d 1481, 1494-97 paras. 15-16 (Rev. Bd. 1986), *review denied* 2 FCC Rcd 1259, 1259 para. 2 (1987), *aff' d by judgment sub nom. Adelphi Broadcasting Corp. v. FCC*, 838 F.2d 571 (D.C. Cir. 1988); *KIST Corp.*, 102 FCC 2d 288, 292 para. 9 (1985), *aff' d per curiam sub nom. United American Telecasters, Inc. v. FCC*, 801 F.2d 1436 (D.C. Cir. 1986), *cert. denied*, 107 S. Ct. 2182 (1987); *Henderson Broadcasting Co.*, 63 FCC 2d 419, 424-26 paras. 10-13 (Rev. Bd. 1977). *See also Cleveland Television Corp. v. FCC*, 732 F.2d 962, 969 (D.C. Cir. 1984). "[W]here there is a basis in the record for inferring that non-voting shareholders will exercise influence or control of an ongoing business," an applicant's integration proposal will be discredited. *Victory Media*, 3 FCC Rcd 2073, 2074 para. 18 (1988).

Coast TV, 4 FCC Rcd 1786, 1787 (1989). As we recently echoed in *Metroplex Communications, Inc.*, 4 FCC Rcd 8149 (Rev. Bd. 1989), the Commission has been recently confronted with a large volume of applications that disingenuously depict a two-tier ownership structure so as to exploit artificially the Commission's comparative structure, *see id.* at 8159 (and cases cited therein), and it has recently taken several steps to thwart such abuses. *See, e.g., Revision of Application for Construction Permit for Commercial Broadcast Station (FCC Form 301)*, 4 FCC Rcd 3853, 3855-58 (1989). [5]

7. Relying on *Victory Media, Inc.*, 3 FCC Rcd 2073 (1988), and *Susan S. Mulkey*, 4 FCC Rcd 5520 (1989), PCLP argues that the pre-organizational activities of its "limited" partners and the lack of involvement of its "general" partner Cooper are not dispositive of its *bona fides* or its right to the extrapolated 100% integration credit. It claims that its "limited" partners have not actively managed PCLP since the application was filed.

8. We do not disagree with PCLP that the pre-organizational activities of its "limited" partners are "not necessarily dispositive" of likely control of its entity. *Mulkey*, 4 FCC Rcd at 5520. *See also Coast TV*, FCC 90-120, released April 27, 1990 (at paras. 12-16) ("*Coast II*"). Rather, as the Commission has stated, the question of whether we have before us a *bona fide* limited partnership must be answered by a review of "the totality of the record evidence." *Magdalene Gunden Partnership*, 3 FCC Rcd 7186 (1988). This is to say the lack of involvement of "limited" partners after the entity has been organized does generally provide some assurance of a *bona fide* two-tier structure. However:

> This reasonable assurance can be undermined, of course, when the totality of the facts otherwise indicates that an applicant's ownership proposal is not *bona fide*. *See generally, KIST Corp.*, 102 FCC 2d 288, 292-93 (1985).

Coast II at n. 4.

9. We agree with the exceptors that PCLP's claims to a good faith limited partnership are conclusively undermined by the totality of the record. First, as Cooper himself has indicated in his testimony (*see supra* para. 5), it is not credible that *bona fide* limited partners would entrust their substantial investment and a very valuable broadcast property exclusively into the hands of an individual they had never met and never examined as to character, business record and acumen, financial responsibilities, *etc.* Conversely, it is no more credible that a reasonable "general" partner would take on unlimited liability for investors he had never met before and *not* seek to negotiate his ownership interest in return for this unlimited exposure (*see id.*). As the Commission explained in *KIST Corp.*, 102 FCC 2d 288, 292 (1985), *aff'd sub nom. United American Telecasters, Inc. v. FCC*, 801 F.2d 1436 (D.C. Cir. 1986)(table), *cert. denied*, 481 U.S. 1050 (1987), it is "incredible" that a party would "giv[e] away the store" to individuals unknown. Moreover, the record contains many other indicia that PCLP is not a *bona fide* limited partnership. For example, Cooper did not contemplate nor inquire into the size of his potential liability, did not know that Wells (who offered him his "position") had no liability herself, did not inquire into the limited partners' ability to pay the attorney fees for PCLP (of which he was the putative "general" partner), did not know who was liable for the engineering fees, and did not even open a bank account for PCLP until more than one year *after* the application was filed (*see* Tr. 1084-85). And, Wells never explained to Cooper what specific duties he was expected to perform. Tr. 1131 (Wells); 946, 942 (Cooper). [6] Based upon the totality of the record evidence, we cannot consider PCLP to be a *bona fide* limited partnership. *KIST, supra* ; *cf. Coast II, supra* ; *Metroplex, supra*. Accordingly, PCLP could receive no more than a 10% integration credit, at best. [7]

POUGHKEEPSIE BROADCASTING LIMITED

10. Structured also as a "limited" partnership, PBL is composed of: (1) "limited" partners Matthew J. Cooney, Jr. (40% equity), Noel deCordova (20%), and Peter deCordova (20%); and (2) sole "general" partner Steven Freeman (20%). I.D., para. 6. PBL sought 100% extrapolated integration credit for Freeman's proposed role as full-time general manager of the station. PBL Ex. 2. The ALJ awarded PBL no integration credit, because he found that Freeman's claim of exclusive control was unreliable and contradicted by the testimony of the "limited" partners, as well as by PBL's answers to interrogatories. I.D., para. 55. Thus, the ALJ found that the "limited" partners routinely managed the affairs of the partnership and advised Freeman "on everything from settlement talks to engineering," and that Freeman had merely accepted their guidance. *Id.*, para. 62. The ALJ concluded that "PBL's limited partners have taken an active interest in the affairs of the applicant," and Freeman "has not provided a reliable and truthful account of his role" in the applicant. *Id.*, para. 63.

11. PBL challenges the ALJ's conclusions as "in conflict with the evidence," PBL Br. at 16, and claims that Freeman's testimony that he would exclusively control PBL was "substantiated by the testimony of PBL's other witnesses." *Id.* at 18. PBL nevertheless acknowledged at oral argument that "Freeman gave confusing testimony and there is no doubt that he did and I am not going to state here that it was consistent at all times; it wasn't." Tr. of Oral Arg. at 1269. We now examine the record.

12. The ALJ found that Freeman, throughout his testimony, greatly exaggerated and distorted his role and his independence in prosecuting the application. *See* I.D., paras. 55-63. For example, Freeman initially testified that he had determined that his equity share in PBL would be 20%. *Id.*, para. 14; Tr. 324-325. However, when pressed on this point by the ALJ, Freeman recanted, and admitted that the 20% equity proposal was listed in the limited partnership agreement when it was presented to him and that he merely acquiesced in that proposal. Tr. 325-326. He then explained that he accepted the 20% equity figure as "fair," because the "limited" partners "would have to put up 100% of costs for the construction and operation of the station." Tr. 327. But the ALJ pointed out that PBL had proposed that bank financing, rather than "limited" partner funding be used to cover construction and initial operation costs. The following colloquy ensued (Tr. 328):

> [ALJ]: Well, then, what was your reason for being willing to take 20%? Why did that seem particularly fair to you?
>
> [Freeman]: To me, it seemed pretty fair because of the fact that, as I saw it, there were other opportunities for me to make money within the company [such] as developing major accounts . . . national accounts for the start of the company, and that's how I looked at it somewhat.

See also Tr. 328-329 (emphasis added):

> [PCLP Counsel]: But there were no negotiations between you and any of the limited partners in which your equity percentage was specifically discussed, were there?
>
> [Freeman]: No, there wasn't.
>
> [ALJ]: And your reason, then, *wasn' t* that they were going to put up the money to build and construct the station?
>
> [Freeman]: *No, it wasn't.*

13. Freeman also changed his testimony as to when and how PBL's counsel was selected. He initially maintained (in answers to interrogatories and in testimony at hearing) that he first contacted PBL counsel's senior partner in October 1986, and that to his knowledge none of the "limited" partners had previously contacted that firm regarding PBL. Tr. 176-77. Freeman also claimed to have written counsel, mentioning that he "would like to possibly retain him as . . . attorney." Tr. 76. Freeman stated that he communicated to the "limited" partners afterwards his desire to retain this law firm, and a retainer check was *then* sent to the firm. Tr. 177; *see also* Tr. 68-77. However, Freeman was shown a $2,000 cancelled check payable to counsel dated August 28, 1986, and drawn on the custodial account of "limited" partner Noel deCordova's law firm. PCLP Exh. 4; Tr. 177-190. Freeman was compelled to admit that the check was drawn before he contacted counsel. Tr. 179. When asked whether he had ever spoken with communications counsel before the $2,000 check was drawn, Freeman answered:

> It says that I spoke to [counsel]. *I had mentioned that I had decided to go with them, but I didn' t speak to them at that time.* That may be an error, I believe.

Tr. 180 (emphasis added). Freeman claimed that although he did not recall whether he had decided upon retaining counsel in August 1986, Tr. 180, he knew that a check "had to be sent to them . . . because there was a decision -- not a decision -- but some talk of possibly obtaining them for counsel." Tr. 181. (The check, however, was not cashed until November 1986. Tr. 182.)

14. Freeman also claimed not to recall why the check was dated August 28, Tr. 181, but was "pretty sure" that he told Noel deCordova to write the check before that date, Tr. 184, but did not recall whether that conversation was in August or July. Tr. 185. He simply "believe[d] that at that time there was s[ome] discussion that they would possibly be the suitable group to be involved with in terms of counsel." Tr. 185. Freeman further alleged that he "had that discussion with Noel deCordova because I believe he knew of Mr. Cooney's involvement with his stations and with that particular firm." *Id.* Freeman also admitted that he was not given the check to send, and he believed that Noel deCordova's law firm must have mailed the check "at my request," but could not recall when he made that "request." Tr. 187-88. Finally, the ALJ queried Freeman (Tr. 189):

> [ALJ]: But you can't figure what happened or why this check was written out at the time and what happened to it and how it got to them. You don't know anything about that?
>
> [Freeman]: No, sir.

15. Upon redirect examination, Freeman alleged that he initially contacted PBL's counsel in "early July or August" of 1986 (Tr. 394-95). He explained that he changed his testimony simply because he "would not have paid [counsel] or had PBL offer any payments to him prior to retaining him," Tr. 396, but he "had no specific record of the time in which [he] had actually contacted [counsel]." Tr. 395; *see also* Tr. 400-402.

16. In contrast to Freeman's explanation of when and what he discussed with counsel, "limited" partner Noel deCordova asserted that, in the summer of 1986 (Tr. 436):

> Steve [Freeman] came to me and said that he had negotiated with [counsel] and that they had come up with some kind of a package pricing schedule for this deal that was satisfactory to him and that it would be appropriate to get some money together in

> order that we could pay them some kind of a down payment on their fee retainer arrangement or whatever.

And, "limited" partner Cooney testified that, sometime after PBL's March 1986 organizational meeting, Freeman called and asked him to recommend some communications law firms. Cooney allegedly suggested three or four firms, including the particular firm that (since 1982) had represented Cooney and which was ultimately retained by PBL. Tr. 554, 556-58. [8] Sometime later during June-August 1986, Cooney purportedly called the law firm, discussed the costs of prosecuting the Poughkeepsie application, and told counsel that he felt "[t]hey were good but expensive." Tr. 554-555, 559. According to Cooney, counsel responded that "we can work something out," that in the future Freeman should deal directly with him, and that "we'll do the best we can for the partnership." Tr. 555-556.

17. *Discussion* : We will affirm the ALJ's adverse credibility determinations with respect to PBL. As recently stated in *Adlai E. Stevenson IV*, FCC 90R-16, released March 16, 1990, at para. 5:

> The law requires that credibility findings of an ALJ be given considerable deference, unless those findings are in irreconcilable conflict with the other record evidence. *TeleSTAR, Inc.*, 2 FCC Rcd 5, 17 (Rev. Bd. 1987)(subsequent history omitted); *see also Opal Chadwell*, 2 FCC Rcd 5502, 5504 (Rev. Bd. 1987)(credibility findings of ALJ generally control, absent "countervailing record evidence" demonstrating "reversible error in that ALJ's credibility determinations," quoting *WEBR, Inc. v. FCC*, 420 F.2d 158, 162 (D.C.Cir. 1969)(subsequent history omitted)); *Broadcast Associates of Colorado*, 104 FCC 2d 16, 19 (1986)("absent extrinsic evidence to the contrary, we believe that the ALJ's judgment . . . is entitled to great weight")(modifying 100 FCC 2d 616 (Rev. Bd. 1985)); *Signal Ministries, Inc.*, 104 FCC 2d 1481,1486 (Rev. Bd. 1986)(absent "patent conflicts with the record evidence, the Commission accords special deference to [an ALJ's] credibility findings since the trier of fact has had a superior opportunity to observe and evaluate a witness's demeanor and to judge his/her credibility"). We should not overturn the credibility findings of an ALJ except in the face of "substantial [record] evidence." *WHW Enterprises, Inc. v. FCC*, 753 F.2d 1132, 1141 (D.C. Cir. 1985).

18. We agree with the ALJ that it appears highly improbable, on the basis of the record testimony, that Freeman had any independent, decision-making role in selecting counsel. Further, Freeman's testimony was unreliable with respect to other matters that further reflect upon who actually controls PBL: *i.e.*, how PBL's engineering consultant was retained, I.D., para. 12; the extent of Freeman's role in handling PBL's public notices, *id.*, para. 13; whether he or "limited" partner Noel deCordova was primarily responsible for obtaining the bank letter which PBL relied upon to establish its financial qualifications, *id.*, para. 11; and whether PBL's counsel directly mailed correspondence and bills to the "limited" partners, *id.*, para. 10. In all these matters the record supports the ALJ's findings that Freeman was significantly less than the moving force he claimed to be. Thus, Freeman's testimony does not "warrant our confidence that his participation in the station's operations will be consistent with the purposes behind the integration criterion," *KIST Corp.*, 102 FCC 2d at 291, and we therefore affirm the ALJ's withholding of any integration credit for PBL. *Cf. Jarad Broadcasting Co., Inc.*, 1 FCC Rcd 181, 183, 185 (Rev.Bd. 1986)(confused testimony undermines claim of control), *aff'd on review*, 2 FCC Rcd 6080 (1987), *aff'd sub nom. Spectron Broadcasting Corp. v. FCC*, 858 F.2d 774 (D.C. Cir. 1988) (Table), *cert. denied*, 109 S.Ct. 1140 (1989).

THE KINNEY GROUP

19. Group is also structured as a limited partnership, with (1) one "general" partner, Leonard R. Kinney, and (2) one "limited" partner, Mid-Hudson Broadcasting Corp. (Mid-Hudson). I.D., para. 38. Kinney is also an 8% owner, president, and director of Mid-Hudson, and is the general manager of Mid-Hudson's standard broadcast station WHVW(AM), Hyde Park, New York, a station for which divestiture is promised if Group succeeds here. *Id.*, paras. 38-39. Although Group has a certificate of limited partnership, it has no limited partnership agreement or any other written document that sets forth any division of its equity between Kinney and Mid- Hudson. *Id.*, para. 38. Group's certificate of limited partnership provides only that Mid-Hudson will receive 90% of Group's profits, and Kinney testified at hearing that he "believes" that he owns 10% equity in Group. *Id.* Based on Kinney's proposed role as full-time general manager of the potential station, Group sought an extrapolated 100% ownership integration credit. The ALJ awarded Group no credit because Group had failed to prove that it had any specific division of equity ownership, and because Kinney's pattern as an officer and director of Mid-Hudson makes it impossible for the "general" partner to be insulated from the "limited" partner, as required by *Ownership Attribution*.

20. In its exceptions, Group argues that based on provisions of New York law, the mere specification in the partnership certificate that the "share of the profits or other compensation by way of income which the limited partner shall receive by reason of his contribution [is 90%]" adequately establishes for the Commission's comparative evaluation purposes that the "limited" partner will own 90% equity of Group and that, therefore, the "general" partner will own a 10% equity share. *See* Group Br. at 6-7. It further claims that the purported 10%/90% equity split between its "general" and "limited" partners was supported by Kinney's "uncontroverted" testimony that he owns 10% of the equity. *Id.* at 7. Various reply exceptions urge, to the contrary, that the establishment of an ownership structure that meets minimal state law requirements for limited partnerships does not *per force* adequately prove the applicant's entitlement to Commission comparative "integration" credit, Wicrae Reply at 6, that "[Group's] direct case made no claim concerning Mr. Kinney's ownership interest," PCLP Reply at 18, and that the insulative provisions contained in Group's certificate of limited partnership are inadequate to support its claim for 100% integration credit because they do not restrict the "limited" partner's corporate shareholders from individually communicating with the "general" partner or from participating in Group's media activities, Wicrae Reply at 6-7.

21. We affirm the ALJ's withholding of integration credit from Group. The Commission has routinely held that its integration analysis is not controlled by local statutes which are not relevant to its comparative licensing policies, but by Commission policy, precedent, and the facts of record. *See , e. g., Cotton Broadcasting Co.*, 4 FCC Rcd 1781, 1782 (1989); *Ownership Attribution, supra*, 58 RR 2d at 616; *Colonial Communications, Inc.*, FCC 90R-20, released March 30, 1990, para. 7; *Richard P. Bott, II*, 4 FCC Rcd 4924, 4929 (Rev. Bd. 1989), *review denied*, FCC 90-109, adopted March 28, 1990; *Mark L. Wodlinger*, 3 FCC Rcd 3139, 3140 (Rev. Bd. 1988); *Bradley, Hand and Triplett*, 89 FCC 2d 657, 662-663 (Rev. Bd. 1982); *see also Newton Television Ltd.*, FCC 90-160, released April 27, 1990, paras. 14-18; *Coast II, supra*. While the Commission has indicated that an applicant's limited partnership ownership structure may be prescribed in the certificate issued by the state, *see Ownership Attribution, supra*, 58 RR 2d at 618 n.60, Group's certificate of limited partnership does even purport to contain a breakdown of its equity ownership, and there is no other document in evidence which does contain such a listing. Moreover, at oral argument, counsel for Kinney conceded that applicable state law permits a partner to receive a percentage of partnership profits which is wholly disproportionate to his actual equity share. Tr. 1313-1314.

22. We next turn to Group's formal integration statement to determine whether the actual equity division between its "limited" and "general" partners are set forth there. It is *not*. It merely recites Kinney's background and proposes him for general manager. *See* Group "Integration, Diversification and Ownership Statement," filed August 30, 1988. Moreover, though Kinney expressed his "belief" and "understanding" that he owned 10% of Group, he was surprised to learn at hearing that its certificate of limited partnership did not specifically list his ownership share. Tr. 1199-1200. He was further surprised to learn that he might share in Group's profits in two ways, as a 10% "general" partner and as an 8% shareholder in Mid-Hudson, Group's 90% "limited" partner. Tr. 1244-1245.

23. Several other problems are evident in Group's posture. First, the limited partnership certificate describes the arrangement as between Kinney and Mid-Hudson Broadcasting Corporation. While it is asserted that Kinney will be insulated from Mid-Hudson, Kinney is an officer and director of Mid-Hudson and has not on this record pledged to resign his corporate position. [9] This distinguishes Group's situation from that in *Cotton Broadcasting Co.*, 4 FCC Rcd 1781, 1782 (1989), where the Commission held that a "general" partner could also own a "limited" partnership interest for valid investment purposes, without affecting the applicant's integration credit. *Cotton* does not hold that an individual can be both an active "general" partner while, at the same time, being an officer or director of a putatively passive "limited" partner. And, second, while Group's state certificate of partnership pledges an insulation between its "limited" partner, *the corporation*, and Kinney, it does not pledge insulation of the corporation's individual shareholders and Kinney; and it is the individual shareholders -- *not the corporation* -- that have funded Group's application. Tr. 1199-1205. For all of the foregoing reasons, we will not disturb the ALJ's refusal to accept Group's integration proposal. [10]

WICRAE EQUITIES LIMITED

24. Wicrae is a corporation with ten co-equal stockholders, five of whom are proposed to work at the station. I.D., para. 20. The ALJ awarded Wicrae only 10% integration credit for the proposed integration of stockholder John Idema (as sales and real property manager of the station). *Id.*, paras. 23, 49, 53. In so doing, he disallowed integration credit: (1) for shareholder Gayle Corbin's role as proposed director of community affairs and station promotions, because her proposal was found to be non-managerial, non-policymaking, and too indefinite, *id.*, paras. 25, 50; (2) for Martina King's role as General Manager, which was found to be incapable of effectuation because of her conflicting employment as a real estate agent, *id.*, paras. 21-22, 48; (3) for Stanislaus Wiktor's role as news director of the station, because the testimonial evidence was equivocal and contradictory as to what he plans to do at the station, *id.*, paras. 27, 51; and (4) for Margaret Engler's role as program director, because her testimony did not establish that she would in fact serve in a decision-making capacity, *id.*, paras. 29, 52.

25. *Discussion*: PCLP challenges the 10% integration credit awarded to Wicrae because, it claims, Idema's role as real property mananger is not managerial and no more than part-time credit (presumably for his proposed role in sales management) should have been awarded. PCLP Br. at 6-7. We reject this argument, and agree with Wicrae that Idema will have a creditable, full-time, managerial role at the station. He testified at hearing that, as "Sales and Real Property Manager," his initial efforts immediately following grant of the Wicrae application will focus on "arranging for the location of . . . our studios and offices," Tr. 698, and "aid[ing] in setting up the office," Tr. 701, because his professional background is in real estate and in construction. *See* Wicrae Exhs. 4; 7 at 2; Tr. 698-704. However, once the station nears readiness for operation, he will focus on soliciting advertisers and managing the sales department, which he expects will have at least two employees. Tr. 698-699, 704. Thus, the record adequately demonstrates that Idema will, in fact, function as the full-time sales manager of the station, a position which the Commission has long accorded weight under the ownership integration comparative factor. *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393, 395 (1965).

26. Wicrae itself seeks restitution of integration credit for its proposed integration of King, Engler, and Wiktor. Wicrae Br. at 5-8. We agree with Wicrae that King's proposal as full-time general manager of the station should be credited. Her hearing exhibits stated that she had recently retired from IBM and will be able to devote full-time to station management. Wicrae Exhs. 2; 7 at 1; Tr. 602-603. She further explained at hearing that she retired from IBM on October 31, 1989, because:

> It was a quality of life issue with me. Second half of my life and I just decided there were other things I wanted to do. I knew that we we going to go for this FM allocation and I was about to be promoted. Rather than get involved in another job that was probably going to be harder for me to leave, I chose to leave. Now, I really want to keep my commitment.

Tr. 604. Upon being asked whether she had since secured other employment, she responded:

> Yes, I have, sir. I went back to school, got my real estate license, my real estate sales person's license and I am currently employed with [a realty company]. I'm self-employed under them . . .

id. She started this job sometime after February 8, 1989, the date she attested to the written hearing exhibits. Tr. 616. She currently devotes "12 hours a day, seven days a week" to the real estate business. Tr. 605. However, she further explained that:

> the reason I went to real estate was because it was something that was--it gave me more flexible time. *I could do as much or as little as I wanted and it was something to keep me going until our license is attained.*

Tr. 616 (emphasis added). She notified her employer that she would be away to prosecute the Wicrae application. Tr. 617-618. Thus, the overall circumstances here, including her retirement from IBM to pursue the application, her stated view that the real estate position "served to keep [her] going until our license is attained," and that the real estate position was "flexible," warrant a reasonable inference that she intends to effectuate her full-time station management commitment, if Wicrae secures the construction permit. *Cf. Coast TV*, 4 FCC Rcd 1786 (1989)(principals are not expected "to remain static during often lengthy proceedings").

27. We also agree with Wicrae that the proposed full-time integration of Wiktor as news director should be credited. His written exhibit avers that he "will be responsible for all the station's news gathering, production and on-air news operations." Wicrae Exh. 6 at 1. On cross-examination, he stressed that he would be "the director of news international/national," Tr. 741, because that is the area of his current expertise. Tr. 743. [11] In that specific area, he will "be the boss," *id.*, and will supervise at least one employee. Tr. 740. He admitted that he was "not familiar with local news," Tr. 741, and therefore, at least initially, he envisioned that station policies concerning local news coverage would tend to be made jointly by the integrated stockholders/managers, Tr. 742-743, and that the program director in particular could suggest specific local needs warranting news coverage. Tr. 741-742. While we find that the record evidence demonstrates that the mechanism for setting news policies of the station is not firmly settled in all areas, it does not warrant the ALJ's conclusion that "there is no means of assessing the managerial role he will play at the station," I.D., para. 51. At minimum, Wiktor will have an important policy-making and decision-making role in determining what national and international news to cover, as well as a supervisory role, and will also participate in setting local news coverage policies. *Compare Webster - Baker Broadcasting Co.*, 88 FCC 2d 944, 950 (Rev. Bd. 1982)(claims of vagueness and lack of knowledge rejected and integration credit awarded where principals' backgrounds and experience assure they can fill responsible station positions) *with Doylan Forney*, 3 FCC Rcd 6330, 6335 (Rev. Bd. 1988)(no credit for roles without significant policy-making and station management functions). In sum, we award Wicrae a 30% quantitative integration credit. [12]

CONCLUSIONS

28. We have awarded Wicrae (with a 30% ownership integration credit) a moderate integration preference over its three competitors, which have received no credit. Because this integration difference is the only comparative factor present in the case, it is decisive. *See Nuance Corp.*, 85 FCC 2d 412, 419 (Rev. Bd. 1981). We therefore find that a grant of Wicrae's application will best serve the public interest.

29. ACCORDINGLY, IT IS ORDERED, That the applications of Poughkeepsie Broadcasting Limited (File No. BPH-870331OR), Poughkeepsie Communications Limited Partnership (File No. BPH-870415KT), and The Kinney Group (File No. BPH-870415ME) ARE DENIED, and the application of Wicrae Equities Limited (File No. BPH-870414KH) for a construction permit to establish a new FM broadcast station at Poughkeepsie, New York IS GRANTED subject to the condition that: [13]

> Before PROGRAM TEST AUTHORITY is authorized by the Commission a fence must be erected at such distances and in such a manner as to prevent the exposure of humans to radiofrequency radiation in excess of the American National Standards Institute guidelines (OST Bulletin No. 65, October 1985). The fence must be of a type which will preclude casual or inadvertent access, and must include warning signs at appropriate intervals which describe the nature of the hazard. Permittee shall submit documentation of compliance with this special operating condition along with FCC Form 302 (Application For License), and the request for PROGRAM TEST AUTHORITY.

FEDERAL COMMUNICATIONS COMMISSION

Eric T. Esbensen
Member, Review Board

FOOTNOTES

[1] Cooper testified (Tr. 986-88):

> [ALJ]: Well, did [PCLP Counsel] tell you what it was going to cost to prosecute the application?
>
> [Cooper]: The understanding was that, with the full contribution of the limited partners, the total would be somewhere around $90,000.
>
> [ALJ]: And so, if you reached that point, what was going to happen after that? Supposing you spent all that money?
>
> [Cooper]: My understanding was that [PCLP Counsel] made it very clear to the limited partners in a meeting that he had had with them that this was the cost of prosecuting the application.
>
> [ALJ]: I see.

[Cooper]: And that that was virtually guaranteed -- that was assured; that was it.

[ALJ]: Okay.

[Counsel]: To your knowledge, is there any document from [PCLP Counsel] or from his office limiting the obligation of Poughkeepsie Communications to [PCLP Counsel's] office?

[Cooper]: I am not aware of any such document.

[Counsel]: How did you learn that there is a limitation upon the cost which Poughkeepsie Communications can incur in this hearing in terms of liabilities to [PCLP Counsel's] office?

[Cooper]: I think I understand your question, [Counsel], but I would like you to repeat it.

[Counsel]: Okay. Did any member of the limited partners ever tell you that the partnership's liability to [PCLP Counsel] is limited to a certain amount?

[Cooper]: No, they did not.

[ALJ]: Did [PCLP Counsel] tell you?

[Cooper]: Yes, he did, Your Honor.

[Counsel]: Did [PCLP Counsel] say that the partnership's liability to [him] is limited to fees? Or did he say the partnership's liability to [him] is limited to all expenses incurred by [his] office in carrying forward the prosecution of the application?

[Cooper]: My understanding is that it pertains to the prosecution of the application. And that is all-inclusive.

[2] Cooper testified (Tr. 973-75):

[Counsel]: At the time you spoke to [PCLP Counsel] about being general manager and general partner in Poughkeepsie Communications, did you discuss the possibility that the station might lose money?

[Cooper]: I have a vague recollection of that.

[Counsel]: Insofar as your state of mind was concerned, Mr. Cooper, it is correct -- isn't it? -- you understand all broadcasting stations aren't guaranteed a profit.

[Cooper]: I understand that [Counsel].

[Counsel]: Did you ask [PCLP Counsel] what would happen if the station lost money, of your financial responsibility with the losses?

[Cooper]: Yes, I did.

[Counsel]: And what did he say to you?

[Cooper]: That I was responsible for the loss.

[Counsel]: And did you ask him how high the losses could go?

[ALJ]: You will have to speak up, Mr. Cooper.

[Counsel]: Did you ask him, Mr. Cooper, how high the losses could go?

[Cooper]: No, I did not.

[Counsel]: Weren't you concerned about that?

[Cooper]: Yes.

[Counsel]: Did you ask anyone about how high the losses could be, on that day?

[Cooper]: No.

[Counsel]: Did you have an accountant at the time?

[Cooper]: No, I didn't.

[Counsel]: Did you have any banking relationships at the time?

[Cooper]: Yes.

[Counsel]: Did you call your banking associates and ask them about what dangers, if any, were involved in becoming a general partner?

[Cooper]: No, I did not.

[Counsel]: Did you ask your lawyer?

[Cooper]: No, I did not.

[Counsel]: Did you ask any relatives?

[Cooper]: No, I did not.

[Counsel]: Did you at any time ask [PCLP Counsel] if someone could hold you harmless from the cost involved in this enterprise if it turned out to go sour?

[Cooper]: I don't recall my making any inquiry in that precise language, but I did ask.

[Counsel]: And what did you say to [PCLP Counsel], and what did he say to you?

[Cooper]: We discussed in general terms, and I only have a very vague recollection of that conversation.

[Counsel]: Even though it was about money?

[Cooper]: Yes.

[3] Cooper testified (Tr. 977):

[Cooper]: I did not understand that Ms. Wells had no liability.

[Counsel]: Did you understand that she did have liability?

[Cooper]: I just did not understand that she had no liability.

[Counsel]: But did you understand that she had liability?

[ALJ]: Did you ask?

[Cooper]: I really did not ask.

[4] Though Cooper believed that the "limited" partners were liable for the expenses of prosecuting the application (though he had no evidence or personal knowledge of their ability to do so), he seemed unsure of the financing for construction of the station. Thus (Tr. 1003):

[Counsel]: And it is now your concept, as the man who is in charge, as general partner, to finance the station through loan monies, is that correct?

[Cooper]: In terms of the first three months of operation that is the intent, that is correct.

[Counsel]: And in terms of the construction, how do you intend to finance the station?

[Cooper]: In terms of construction -- and, again, that is a relative term, "construction" -- that may again require an additional financial obligation.

No financial qualifications or financial certification issues against PCLP were tried in this case and, apparently, none were sought. Nonetheless, Cooper's testimony ineluctably raises substantial and material questions of fact as to his certification of, and the basic adequacy of, PCLP's financial qualifications. But for the fact that PCLP does not prevail in any event, we would remand the proceeding on appropriate issues with respect to that applicant.

[5] In its Form 301 *Revision*, the Commission noted the characteristics of a number of applicants whose integration credit was denied, for example:

> The limited partner contributed 85% of the equity, petitioned the Commission in his own name to have the channel allocated, hired the consulting firm which prepared the application, signed the contracts for equipment and preparation of the application, hired legal counsel, obtained the transmitter site, advised the general partner on all application decisions (which advice was followed in every instance), prepared the financial plan, entered into a bank agreement to provide the financing, and represented the partnership in negotiations with other applicants. *See also Berryville Broadcasting Co.*, 70 FCC 2d 1 (Rev. Bd. 1978)(although integrated general partners claimed an integration credit was warranted, all financing was provided by the third partner; thus, true and actual control rested with that partner); *Payne Communications, Inc.*, 1 FCC Rcd 1052, 1058, 1060 (Rev. Bd. 1986)(integration credit denied where limited partner, *inter alia*, employed a research agency to find general partners with favorable qualitative enhancements for his application); *Pacific Television, Ltd.*, 2 FCC Rcd 1101 (Rev. Bd. 1987), *review denied*, 3 FCC Rcd 1700 (1988)(limited partner provided 99% of the financing and paid for legal counsel who prepared the application and retained engineering consultant); *Religious Broadcasting Network*, 3 FCC Rcd 4085, 4097-98 (Rev. Bd. 1988), *reconsideration granted on other grounds*, 3 FCC Rcd 6216 (Rev. Bd. 1988)(general partners materialized shortly before the application was filed, limited partner held a 90% ownership interest and provided every major element of the application including financing, attorneys and its engineer).

4 FCC Rcd at 3867 n.41; *see also id.* at n. 39.

[6] Due to misnumbering of the transcript, page 946 logically succeeds page 941 and precedes page 942.

[7] Not to the contrary is *Susan S. Mulkey*, *supra* para. 7. There, although reversing ALJ and Board rejections of a two-tier ownership structure, the Commission found there that the sole "active" equity holder (1) "decided that the applicant should be a corporation"; (2) "elected to acquire a 10% interest" after discussing a comfortable level of financial commitment on her part; (3) "signed an interest bearing promissory note" for her equity, and would "repay the note even if [her applicant] is not successful in securing a license." 4 FCC Rcd at 5521. As the evidence in this record reflects, none of these indicia are applicable to Cooper. Indeed, unlike the principal in *Mulkey*, Cooper had never even met his "partners," let alone negotiated his share. Nor did he choose the ownership structure, or contemplate his liability, and he was unsure of the liability (and financial ability) of his "partners."

[8] Freeman testified that he had independently obtained the names of two or three communications attorneys and that Cooney had mentioned the names of two more attorneys, including PBL's current law firm. Tr. 68-70. Notably, however, Freeman did not seek referrals for communications counsel from his personal attorney, Tr. 67-68, or from those broadcast stations in New York State where he had previously worked. Tr. 73. Nor could Freeman recall whether he had ever asked PBL's counsel to describe his qualifications, but he testified that he simply selected counsel because "he was assured . . . and he directed things right to the point of saying that he would handle this and that was enough for me." Tr. 74.

[9] Group's integration statement does promise that Mid-Hudson will divest WHVW if awarded the instant license but no more. At hearing Kinney stated his belief as follows (Tr. 1235):

> [I]f we are successful in getting the grant for the FM, this would all dissolve into nothingness, Mid-Hudson would not exist anymore.

But nothing in the record requires Mid-Hudson to dissolve; or, indeed, to preclude it from acquiring other broadcast properties.

[10] We also reject Kinney's argument (Br. at 7-8) that its certificate of limited partnership is "almost identical" to that of the grantee in *Chester Associates*, 102 FCC 2d 93 (Rev. Bd. 1985) (*Chester I*), 104 FCC 2d 443 (Rev. Bd. 1986), 104 FCC 2d 822 (Rev. Bd. 1986)(remand order), and 2 FCC Rcd 2029 (Rev. Bd. 1987) (*Decision*), *settled by Order*, 4 FCC Rcd 6488 (1989). The *Chester I* opinion focused exclusively on the Commission's "spousal attribution" policies. No question was raised in that case as to whether the certificate clearly and overtly specified the respective equity shares of the "general" and "limited" partners. In its later *Decision*, the Board awarded the applicant limited partnership 100% ownership integration credit based largely on the competing applicant's post-hearing concessions that the limited partnership at issue was "valid" and "not a 'sham'." *Id.* at 2030. In short, the issue currently before the Board was not joined in the *Chester* case.

[11] For example, Wiktor has worked for Radio Free Europe, and currently devotes about three hours per week there producing a 20-minute broadcast program. Tr. 758.

[12] In light of the decisionally significant 30% integration credit we award to Wicrae, we need not reach its request for yet an additional 10% credit for Margaret Engler.

[13] The release of this document was held in abeyance prior to final editing for the inclusion of recent Commission precedent and reassignment to a different Board Member.

DISSENTING STATEMENT OF BOARD CHAIRMAN MARINO

Separating shams, frauds, or legal hoaxes from legitimate proposals is a difficult task even when we affirm the ALJ's credibility findings. *See , e.g., Victory Media, Inc.*, 3 FCC Rcd 2073 (1988), and *Susan S. Mulkey*, 4 FCC Rcd 5520 (1989), where the Commission reversed our decisions affirming the ALJ's sham findings. *See also KIST Corp.*, 102 FCC 2d 288, 290-292 & n.8 (1985) (ALJ's findings of *bona fides* reinstated).

Here, as in *KIST*, *supra*, the Board strains to reverse another experienced ALJ, who in past "sham" cases has demonstrated his ability to engage "in a thorough, critical, but objective review of the factual record" while rejecting adversarial contentions which constituted nothing more than pandering to mere suspicions. *Utah TV Assn. Ltd.*, 102 FCC 2d 1470, 1474 (Rev. Bd. 1985). In fact, in the present case, after making the required findings, the ALJ concluded that PBL's proposal did not satisfy the Commission's standards. ID, paras. 55-63. On the other hand, PCLP's proposal did satisfy those requirements, the ALJ concluded, because:

> Mr. Cooper has not relied on pretense to mask his limited role. He has received a 10% interest for undertaking his position as general partner and it appears from the few actions he has taken that he had acted on behalf of the partnership independently of the limited partners. There is no evidence that once Mr. Cooper became the general partner that Ms. Wells, or any other limited partner, has been active in deciding how the partnership will be operated. *See Susan S. Mulkey*, 4 FCC Rcd 5520, *supra*, at 5521. PCLP is entitled to be credited with the 100% integration for the promise of its general partner, Thomas Cooper to manage the proposed station. ID para. 66.

Several of the factors which are advanced as reasons for reversing the ALJ in this case were also invoked by the Board in *KIST*, *supra*, and found by the Commission not to be persuasive indicators of a sham application. Thus, like the *KIST* principal, Mr. Cooper joined the application shortly before it was filed, made no "financial contribution," and was given his ownership interest (10% as contrasted with 35% in *KIST*). Cooper did bring other positive and substantial attributes to the venture as the ALJ found:

> Thomas Cooper proposes to work full time, 40 hours per week, as general manager. PCLP Exh. 3, at 7-8. He would direct the operations of the station, establish employment policies, oversee programming, sales, technical and accounting operations. PCLP Exh. 3, at 8. Cooper lived in Poughkeepsie or the area from 1949 to 1979 and he would move back to Poughkeepsie if PCLP's application is granted. PCLP Exh. 3, at 1, 7. Cooper participated in various community activities in Poughkeepsie from the late 1960's until 1975 when he moved to Wappinger, New York. PCLP Exh. 3, at 2-7. Cooper has broadcast experience as an announcer, reporter, assistant news director and news director at various radio stations which he gained from June 1967 to August 1978. *Id.* at 6-7. Cooper is a black African-American. *Id.* at 1.

ID, para. 37. The record also establishes that Mr. Cooper has had management experience in government and industry. He is currently Director of Public Information and Public Relations of the New York State Office of General Services, and the Executive Director of the New York State Martin Luther King, Jr. Commission. In January 1983 and 1984 he graduated from the IBM Sales and Marketing Schools in Dallas, Texas. In March of 1970 he was invited to help plan the Governor's White House Conference on Children and Youth, and in preparation for the conference in Washington, D.C. he helped identify problems and issues of major concern to young people in the Poughkeepsie area. PCLP Exh. 3, at 1, 4, and 7.

To the extent necessary, Cooper has brought his managerial experience to bear upon PCLP. He helped counsel draft the application, prepared a budget, hired an accountant, certified to PCLP's financial qualifications, paid bills, contacted an equipment supplier, and helped counsel arrange for the publication of local notices and the creation and maintenance of a local public file. *See* Tr. 990-996, 1002-1010, 1019-1048. Therefore, Cooper appears as responsible for the prosecution of the application and the management of the applicant as was the controlling principal in *Mulkey*, 4 FCC Rcd at 5521 para. 7.

But what is most tellingly missing from the Board's analysis reversing the ALJ, even after the invocation of the "totality of the record," Decision, para. 9, is any evidence that after Cooper became general partner the limited partners remained active in the management of the proposal. This is the type of evidence that the Com-

mission has declared to be decisional, and which the ALJ correctly found is not present in this record. *See, e.g., Mulkey, supra,* and *Coast TV,* FCC 90-120, released April 27, 1990, paras. 15-17. Since the ALJ correctly found the facts and applied the controlling Commission standards, we should affirm his Initial Decision.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-250

In re Applications of

GLOBAL INFORMATION TECHNOLOGIES, INC.	File No. BPCT-861219KG
TEXSTAR COMMUNICATIONS, LTD.	File No. BPCT-870212KM
FRONTIER BROADCASTING, INC.	File No. BPCT-870212KN
FREDERICKSBURG CHANNEL 2	File No. BPCT-870212KP
HAL S. WIDSTEN	File No. BPCT-870212KT
STONEWALL BROADCASTING, INC.	File No. BPCT-870212KU

For Construction Permit
For a New Television Station
Fredericksburg, Texas

MEMORANDUM OPINION AND ORDER

Adopted: May 16, 1990; Released: June 6, 1990

By the Review Board: MARINO (Chairman), BLUMENTHAL, and ESBENSEN.

1. This proceeding is currently pending before the Review Board on exceptions. By *Memorandum Opinion and Order*, 5 FCC Rcd 535 (1990), we directed TexStar Communications, Ltd. (TexStar) to supplement the existing record in order to resolve an outstanding question pertaining to its application. In so doing, we noted that TexStar's comparative proposal, as credited by the Administrative Law Judge's *Initial Decision*, 4 FCC Rcd 5445 (1989), was equal or superior to that of Stonewall Broadcasting, Inc.'s (the prevailing applicant below), but that an ambiguity concerning TexStar's financial qualifications existed that first needed to be resolved. On March 7, 1990, TexStar complied with our *Order*. Replies to its submission were filed by Global Information Technologies, Inc., Fredericksburg Channel 2, and Stonewall; and TexStar (requesting leave to file) responded thereto. Based on the supplemental information, substantial and material questions of fact have been raised concerning TexStar's financial proposal which can be resolved only by an evidentiary hearing. We therefore remand this proceeding to the ALJ on a financial issue against TexStar.

2. *Background:* Lesvia Guerra-Cox filed TexStar's application on February 12, 1987, as a sole proprietor. She amended her application on April 7, 1987 to report that Hector Pedregon had joined the applicant, and that the applicant had become a general partnership. She further amended on January 4, 1988 to show that TexStar had since become a limited partnership, and that the former general partnership entity was now the general partner of the thrice-restructured applicant. With each amendment, this applicant affirmatively declared that there was no change concerning its initial financing. Thus, TexStar has continuously represented that its financial certification was based on a loan commitment from the NBC Bank of San Antonio, Texas. A copy of the letter of February 10, 1987 from the bank was produced on discovery, but its text was entirely redacted. We directed TexStar to supply the Board with an unedited copy of the letter, and related documentation.

3. The February 10, 1987 NBC Bank letter (emphasis added) reads as follows:

Ms. Lesvia Guerra-Cox
General Partner
TexStar Communications
8033 Forest Ash
San Antonio, Texas 78233

Dear Mrs. Guerra-Cox:

Thank you for stopping by and discussing with us your application for Channel 2 in Fredericksburg, Texas, filed on behalf of TexStar Communications. We understand your financial needs to construct and operate the station for six months should not exceed $8,000,000.00. Although *we have not reviewed the financial information required by us to fully consider a loan commitment, we are seriously interested in exploring ways* in which we could assist you in meeting your financial needs.

New business of this type has historically been financed on an interest only basis computed at one or two points over the prime rate at that time. Payments against the principal loan amount would likely begin approximately three years after the station commences commercial operation. A loan of this type would generally require the personal guarantees of the Limited Partner(s) and be secured by the construction permit and other assets held at the time by TexStar Communications.

Please keep us posted regarding the status of your application for Channel 2. Assuming you are successful in receiving the construction permit, we recommend you file a formal loan application with our Bank so that we may further our discussion regarding your financial needs. Best of luck in the future.

Sincerely,

Charles D. Lutz, III
President

Accompanying that letter is the affidavit of Ms. Guerra-Cox, in which she avers that she approached NBC Bank because it had previously issued to her a letter concerning another broadcast application, and that the bank was familiar with her history as well as the general operation of broadcast stations. The affidavit further indicates that she provided Lutz with details concerning the instant application, and believed (based on the "tenor" of their conversations) that the bank would provide financing for her station. Her affidavit adds, however, that she was unable to meet personally with Lutz after Pedergon joined the applicant; and, that after the Board asked for information concerning TexStar's financing, Lutz refused to meet with Guerra-Cox to discuss the letter. He had, by then, left NBC Bank but when contacted, Lutz instructed his secretary to inform Guerra-Cox that she would have to contact NBC Bank's legal counsel, or have him (Lutz) subpoenaed. The NBC Bank itself also refused to provide TexStar with any support.

4. TexStar has also submitted two other bank letters: one from the First Republic Bank (now NCNB Texas Bank), dated January 28, 1988; and the second from First National Bank of Kerrville, Texas, dated March 1, 1990. Guerra-Cox here explains that, prior to filing her initial application, she spoke with F. Ed Guzman, Vice President of First Republic Bank, about her proposed broadcast facility, and was assured orally that it would fund her application. She claims that she did not then consider First Republic a source of funding, since her understanding was that one commitment was sufficient. She further submits that the First Republic commitment was reduced to writing a year later, however, because of her surprise at Lutz's refusal to meet with her, after Pedregon joined TexStar. An affidavit from Guzman, executed February 15, 1990, supports Guerra-Cox's representation that they had previously discussed her application. But his affidavit adds that First Republic has recently issued internal regulations concerning financial proposals for start-up broadcast stations, and that the bank's ultimate decision on TexStar's proposal will depend on whether that applicant satisfies its current guidelines. The second bank letter, from First National Bank of Kerrville, indicates that the bank has reviewed TexStar's proposal, and is willing to make the loan subject to approval of correspondent banks.

5. All of the commenting parties raise objections to the legal sufficiency of each of the bank letters. With respect to the February 10, 1987 NBC Bank letter, they argue that it lacks the requisite "present firm intention" to fund the applicant. It states on its face that the bank has never seen the necessary TexStar financial data, and refers to TexStar as a limited partnership, even though TexStar was at that time putatively a sole proprietorship. Noting that TexStar's financial certification was based exclusively on the NBC Bank letter, they argue that TexStar has never been financially qualified. Global contends, therefore, that no remand is necessary, and that the Board can disqualify TexStar without adding a financial issue. The other parties also contend that First Republic's oral assurance (subsequently reduced to writing) is not credible, in light of: (1) the deposition testimony of Guerra-Cox that she had not spoken with any financial institution *other than* NBC Bank prior to filing her application; and (2) the purported shortcomings of the NBC Bank letter, on which TexStar would not have relied had it possesed an uncontroverted loan commitment. They also point out that First Republic has not determined whether TexStar's proposal satisfies its current guidelines. Stonewall particularly questions whether TexStar has expanded its financial proposal without a proper amendment. Finally, the parties contend that the Kerrville bank is expressly conditioned on the approval of correspondent banks, but no showing has been made that any such banks are willing to participate in the loan. *See CBS, Inc.* 49 FCC 2d 1214, 1228-1229 (Rev. Bd. 1974), *recon. denied*, 51 FCC 2d 651 (Rev. Bd. 1975), *rev. denied*, 75-1281, released November 25, 1975.

6. TexStar responds that Guerra-Cox's financial certification was based on the "totality of the evidence and circumstances" surrounding her discussions with Lutz, and not on the NBC Bank letter, standing alone. TexStar claims it was Guerra-Cox who first provided the NBC Bank a copy of a draft letter, on which its February 1987 letter was based. Furthermore, it asserts that the fact that Guerra-Cox's deposition testimony relating to her financial efforts is not all-inclusive is not surprising, given that it was offered in the context of the "standard comparative" issue. With regard to its alternative reliance on oral discussions with First Republic, TexStar submits that, regardless of Guerra-Cox's understanding at the time of her deposition, the fact remains that a loan assurance (other than from NBC Bank) was sought, received, and existed prior to the filing of its application.

7. Although an applicant need not have a binding written agreement to certify that it is financially qualified, *Las Vegas Valley Broadcasting Co. v. FCC*, 589 F.2d 594, 599-601 (D.C. Cir. 1978), the Commission does require "reasonable assurance" of " *committed* " funding to construct the proposed facility and to operate for three months without revenue. *See* FCC Form 301, Instructions, Section III; *see also Northampton Media Associates*, 4 FCC Rcd 5517, 5518 (1989)(emphasis added), which held:

> In order to prove reasonable assurance of financial qualifications at the time of certification, the applicant must adduce probative evidence that, prior to certification, it engaged in serious and reasonable efforts to ascertain predictable construction and operation costs. To establish the availability of funds to meet these estimated expenses, *the applicant must provide substantial and reliable evidence showing " sufficient net liquid assets on hand, or committed sources of funds to* construct and operate for three months without revenue . . . ."
>
> * * *
>
> Probative evidence necessarily includes something more than the self-serving, uncorrobated statement of the individual responsible for the certification that he had taken steps to secure the needed funds. For example, uncontroverted affidavits or testimony establishing an oral contract to lend money would suffice to demonstrate a committed source of funds.

4 FCC Rcd at 5519. Where questions are raised as to reliance on "bank letters," the Commission has held that:

> Although the bank letters relied upon by the . . . applicants meet the reasonable assurance standard and the various banks have asserted that they were issued in good faith, it is clear that the applicants' individual qualifications were not considered by those banks. *Inquiry is needed to determine whether the bank letters were more than accommodations and were issued consistent with normal banking practices.*

Christina Communications, et al., 2 FCC Rcd 1971, 1974 (1987)(emphasis added); *see also Rebecca L. Boedker*, FCC 90R-30, released May 4, 1990. Finally, it is incumbent on an applicant who loses "reasonable assurance," after it has filed its application, to report that fact to the Commission pursuant to 47 C.F.R. § 1.65 of the Commission's Rules. *See Belo Broadcasting Corp.*, 42 FCC 2d 520 (Rev. Bd. 1973); *Tri-State Communications*, 4 FCC Rcd 8258 (Rev. Bd. 1989), *recon. denied*, 5 FCC Rcd 534 (Rev. Bd. 1990). A subsequent attempt to amend to reestablish "reasonable assurance" (if the filing of such amendment falls outside the period for filing amendments as of right) requires the applicant also to meet the "good cause" test set forth in *Erwin O'Conner Broadcasting Co.*, 22 FCC 2d 140, 143 (Rev. Bd. 1970). *Edwin A. Bernstein*, 4 FCC Rcd 8420 (Rev. Bd. 1989), *aff'd* FCC 90-165, released May 3, 1990.

8. Here we are unable to resolve the question of TexStar's financial qualifications on the basis of the information and conflicting allegations before us. We recently underscored the importance of specifying a separate financial issue before making an adverse findings, so as to provide the parties notice of the intended scope of inquiry, *Rebecca L. Boedker, supra*, at paras. 15-16. Thus, a remand of this proceeding cannot be avoided and, if the documents or proposed exhibits exchanged prior to the supplemental hearing or the supplemental hearing testimony so warrant, the Presiding Officer should, on his own motion, further enlarge the issues to include false certification/misrepresentation issues, as appropriate. *See, e.g. JAM Communications, Inc.*, 4 FCC Rcd at 3754, 3758 n.6.

9. ACCORDINGLY, IT IS ORDERED, That this proceeding IS REMANDED to the Presiding Officer for the adduction of additional evidence and preparation of a Supplemental Initial Decision on the following issue:

> (1) To determine whether TexStar Communications, Ltd. was and is financially qualified to be a Commission licensee; and

10. IT IS FURTHER ORDERED, That the motion to strike filed April 27, 1990 by Stonewall Broadcasting, Inc. IS DENIED; and that the motion for leave to file reply, filed April 19, 1990 by TexStar Communications, Ltd. IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Joseph A. Marino
Chairman, Review Board

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-433

In re Applications of

ATLANTIC CITY COMMUNITY BROADCASTING, INC.	File No. BPH-870826ME
RADIO-VISION COMMUNICATIONS, LIMITED PARTNERSHIP II	File No. BPH-870826MF
KNIGHT RADIO, INC.	File No. BPH-870826MH
HILLSIDE BROADCASTING LIMITED PARTNERSHIP	File No. BPH-870827MK
ATLANTIC WIRELESS BROADCASTING LIMITED PARTNERSHIP	File No. BPH-870827MO
D & L BROADCASTING	File No. BPH-870827NC

For Construction Permit for a New
FM Broadcast Station, Channel 297B1
Atlantic City, New Jersey

Appearances

Leonard S. Joyce on behalf of Atlantic City Community Broadcasting, Inc; *William E. Zimsky, Hugh P. Taylor, Byron E. Harrison* on behalf of Radio-Vision Communications II, Limited Partnership; *John F. Garziglia, Howard J. Barr* on behalf of Knight Radio, Inc.; *Morton L. Berfield, John J. Schauble* on behalf of Hillside Broadcasting Limited Partnership; *Arthur V. Belendiuk, Lenny M. Ponomarenko* on behalf of Atlantic Wireless Broadcasting Limited Partnership; *Cary S. Tepper* on behalf of D & L Broadcasting; and *Y. Paulette Laden* on behalf of the Mass Media Bureau.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE EDWARD J. KUHLMANN

Issued: May 21, 1990; Released: June 5, 1990

1. The six applications in the caption and 14 other applications now dismissed were designated for hearing, on August 23, 1988, to determine which of the applicants should operate commercial FM Channel 297B1 at Atlantic City, New Jersey. *Hearing Designation Order*, 3 FCC Rcd 5595 (1988). The following issues remain to be determined in this decision: -

> 1. (a) To determine whether Atlantic City Community Broadcasting, Inc. failed to report an adverse final court determination of sex discrimination involving the conduct of Lawrence A. Hayes, an ACCBI principal.
>
> (b) And, if it did, whether that failure and the conduct engaged in should disqualify Atlantic City Community Broadcasting, Inc.[1]
>
> 2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. A prehearing conference was held December 7, 1988, Tr. 1-35, and hearing sessions were convened in 1989 on July 17, Tr. 36-264/329, July 18, Tr. 330-581/589, July 19, Tr. 590-824/849, July 20, Tr. 850-1086/1199, and July 21, Tr. 1200-1368, and January 16, 1990, Tr. 1369-1535. Proposed findings were filed by five applicants on September 29, 1989 and by Knight and the Mass Media Bureau on September 28, 1989. Supplemental proposed findings were filed by the applicants on February 15, 1990 and, on February 20, 1990, Knight filed proposed findings with a reduced number of pages to conform to the page limitation. Replies were filed by all applicants on October 25, 1989; Radio-Vision filed an erratum on October 26, 1989. Supplemental replies were filed by all applicants, but D & L, on February 22, 1990. In addition, proposed findings were filed by the dismissed applicant, Atlantic Shore Broadcasting, on September 29, 1989; ASB's proposed findings will be considered to the extent they are applicable to the remaining competing applicants.

FINDINGS OF FACT

Issue 1: Whether ACCBI failed to report a final adjudication of sex discrimination involving the conduct of Lawrence Hayes and whether the failure to report it and the conduct of discrimination should disqualify ACCBI.

3. Form 301, October, 1986 edition, which ACCBI filled out, inquired at Question 10(a), in pertinent part, if any "adverse finding [had] been made or an adverse final action taken by a court or administrative body as to the applicant or any party" to the application under provisions of law related to discrimination. ACCBI answered no. Application of ACCBI, filed August 26, 1987, at 5. On February 13, 1985, Lenore Frazier filed a complaint in the Superior Court of New Jersey, Law Division against *WUSS Radio Station and ABCD Corporation and John Does One Through Ten, d / b / a WUSS Radio Station and/or ABCD Corporation*. Radio-Vision Exh. 6. The complaint alleged a violation of the New Jersey Law Against

Discrimination during the course of Ms. Frazier's employment at radio station WUSS, Atlantic City, New Jersey, where ACCBI principal, Lawrence Hayes, was the general manager. *Id.*, at 2-3; Tr. 1414. Mr. Hayes is the only voting stockholder of ACCBI.

4. Ms. Frazier worked at radio station WUSS in the summer of 1984. Tr. 1392; Radio-Vision Exh. 6, at 2. During the entire time Ms. Frazier was employed at WUSS, Lawrence Hayes was the general manager of WUSS. Tr. 1392. She alleged in the First Count of the Complaint that she had been subjected to sexual harassment by personnel employed by WUSS. Radio-Vision Exh. 6, at 2. Ms. Frazier further alleged in The First Count that she complained about the harassment, but that the defendants either failed to act on her complaint or condoned the complained of behavior. *Id.*, at 2. Ms. Frazier alleged that she was improperly terminated because of her complaints. *Id.*

5. A jury trial was held in the matter. Tr. 1395. Mr. Hayes hired Michael Hawkins to represent WUSS. Tr. 1395-96. Mr. Hawkins received free advertising time from WUSS as his fee for defending the Complaint. Tr. 1480. Mr. Hawkins cross-examined Ms. Frazier at the trial. Tr. 1395-96. The jury reached a verdict adverse to the defendants. Radio-Vision Exh. 8. The jury specifically found that "Larry Hayes, while in the course of his employment as general manager of the defendant, sexually harass[ed]" Lenore Frazier. Radio- Vision Exh. 7. The jury additionally found that Lenore Frazier was discharged from her employment with the defendant as a result of complaints or protests made because of Larry Hayes' sexual overtures. *Id.* Compensatory damages and punitive damages were awarded. *Id.* By judgment, filed June 2, 1986, the Superior Court of New Jersey accepted the jury's determinations. Radio-Vision Exh. 8. Mr. Hayes testified at the trial. He was prepared by Mr. Hawkins, who also conducted his direct examination at the trial. Tr. 1396. He testified on both direct and cross-examination. *Id.* Ms. Frazier was also cross-examined by Mr. Hawkins. Tr. 1396. Mr. Hayes decided not to appeal the verdict. Tr. 1405-06.

6. Mr. Hayes was the general manager of WUSS during Ms. Frazier's employment and during the trial of *Lenore Frazier v. WUSS*. Tr. 1392. He approved the decision to hire her. Tr. 1472-73. He also believed that he had a personal interest in defending the suit as an adverse judgment would be detrimental to his record as a broadcaster. Tr. 1397. He considered the suit to be a personal and professional embarrassment. Tr. 1441. At the hearing, Mr. Hayes denied he was a defendant in the matter. Tr. 1444. He testified that "John Does One Through Ten" referred only to the five members of the Board of Directors of WUSS. Tr. 1444, 1496-97. At his April 20, 1989 deposition, however, Mr. Hayes testified that he was a defendant. Tr. 1445-46.

7. At his April 20, 1989 deposition, Mr. Hayes stated that he lost the case because his attorney "did not show up." Tr. 1407. At the hearing, he admitted that that statement was untrue and that his attorney did appear and defended the case. *Id.* Lawrence Hayes attempted to justify his deposition statement on the grounds that he was only being "facetious." He said that what he meant was that he thought his attorney did not do a good job and was responsible for the loss. Tr. 1492. He later testified, however, that he badly wants to be the successful applicant and that he took his deposition testimony seriously and was not being facetious. Tr. 1501. He also reviewed his deposition testimony after it was given, but he did not make any corrections in the transcript because he found his statements to be accurate. Tr. 1503.

8. Mr. Hayes testified at the hearing that he answered "no" to Question 10(a) because the Lenore Frazier lawsuit "never entered my mind as bearing upon Question 10." ACCBI Exh. 9, at 1. Tr. 1433- 34. ACCBI filed an "Opposition to Motion to Enlarge Issues," on July 7, 1989, which contained the "Declaration of Lawrence A. Hayes," dated July 6, 1989. Tr. 1426-27. ACCBI Exh. 10. In that earlier made declaration, Mr. Hayes did not even suggest that the reason he answered "no" was because he did not think of the Frazier lawsuit. ACCBI Exh. 10; Tr. 1428-29, 1433-34, 1486. In his declaration, Mr. Hayes claimed he answered "no" to Question 10 because (1) the lawsuit and judgment "relate[] to what I believe was simply an expression of dissatisfaction from a disgruntled former employee . . ."; (2) "the suit was brought against WUSS . . . I was not named in the suit . . ."; and (3) "[i]n my mind, this lawsuit did not involve discrimination. The question on the FCC application did not relate to this incident which, in my mind, amounted to blackmail by someone angry because my news director had fired her." ACCBI Exh. 10, at 3-4.

9. Despite that declaration, at his earlier deposition in the Frazier lawsuit, Mr. Hayes referred to the suit as a "sexual discrimination suit." Tr. 1507. Moreover, as a result of the jury's verdict, he knew that sexual harassment was prohibited by the laws of New Jersey. Tr. 1413. In addition, during the discovery phase of this proceeding, he became aware that the jury's adverse finding might become an issue in this proceeding after other parties began inquiring about the Complaint. Tr. 1425, 1499. Despite that notice, ACCBI did not amend to report the court's determination. Furthermore, although he had a clear understanding of what occurred in the Frazier suit, Mr. Hayes stated that he believed that the discrimination against Ms. Frazier did not have to be reported on his Form 301 because the word discrimination on Form 301 refers only to racial discrimination. ACCBI Exh. 9, at 3.

10. As general manager of WUSS, Mr. Hayes was responsible for the implementation and supervision of the station's Equal Employment Opportunity Program. Tr. 1409. He was manager of the station from 1978 until 1988. ACCBI Exh. 2, at 4. Mr. Hayes was in complete charge of WUSS' operations. He was never supervised by WUSS' owners and made all decisions affecting the station. Tr. 1494-97. From 1976 until 1978, prior to becoming general manager of WUSS, Mr. Hayes was the general manager of WENN, Birmingham, Alabama, where he was also responsible for implementing and supervising the station's EEO program. Tr. 1410; ACCBI Exh. 2, at 4. Mr. Hayes understood the consequences of violating the Commission's EEO rules and thought the Complaint might affect the renewal of WUSS' license. Tr. 1410, 1441. Mr. Hayes alternately admitted and then denied that he reviewed the Commission's EEO Rules prior to filing ACCBI's application. Tr. 1416-20.

11. Mr. Hayes cannot recall whether WUSS ever had an EEO guide in any form at the station. Tr. 1464. He was responsible for posting EEO material at WUSS, but he cannot recall whether information was ever updated. Tr. 1471. He did not discuss WUSS' posted EEO materials with the employees. Tr. 1471. During some of his tenure as general manager of WUSS, Mr. Hayes subscribed to National Association of Broadcasters' materials about reg-

ulation. Tr. 1450. He testified that WUSS was definitely a member of NAB in 1981 and 1982, but he was not sure about the station's membership status in 1985. Tr. 1458, 1462. While he was a subscriber, the NAB sent out information and advice concerning equal employment opportunity and sexual harassment. Tr. 1452-68. In November 1981, the NAB sent to its subscribers an article on "Current Developments in the Area of Sex and Age Discrimination in the Workplace." Tr. 1459. The article pointed out that sexual harassment is sexual discrimination. Tr. 1460-61. In December of 1982, the NAB sent its subscribers a memorandum entitled "Check List for Employee Terminations." Tr. 1462. WUSS subscribed to NAB materials at the time. Tr. 1462. The memo encouraged broadcasters to give close scrutiny to a discharge decision, particularly if the employee is a female and has complained of sexual harassment. Tr. 1463. Mr. Hayes read the information forwarded by the NAB and then put it in a file cabinet. Tr. 1459-60. As general manager, Mr. Hayes was in charge of EEO compliance and, as the EEO policy director, it was his responsibility to review the NAB and Commission publications on EEO matters. Tr. 1409, 1451-52. When pressed as to what he might have done in 1985 to keep himself apprised of EEO issues and Commission EEO regulations, he admitted that he did nothing at all to insure that women were not discriminated against at WUSS in 1985. Tr. 1455.

12. Mr. Hayes proposes to be responsible for implementing ACCBI's EEO program. Tr. 1415. He signed ACCBI's Model EEO program, FCC Form 396-A, which was submitted with ACCBI's application. *Id.* Mr. Hayes completed ACCBI's Model EEO program when he prepared ACCBI's application. In order to complete Form 396-A, he familiarized himself with the instructions which were part of the form. Tr. 1416-17. When completing Form 396-A, he did not refer to Section 73.2080 of the Commission's rules on equal employment opportunities. Tr. 1423. Form 396-A specifically refers to Section 73.2080. Radio-Vision Exh. 9. That section states that "no person shall be discriminated against in employment . . . because of . . . sex." FCC Form 396-A mentions "women," "female" or "sex" eighteen different times with regard to equal employment. Radio-Vision Exh. 9.

13. Mr. Hayes realized that the adverse judgment in the Frazier case might affect the renewal of the station's license. Tr. 1441. Although, during the hearing, Mr. Hayes testified the the FCC never contacted him about the Frazier lawsuit, Tr. 1499, the Commission had called him about it. Tr. 1512-13. Not until he was shown a copy of his deposition testimony, taken during the Frazier lawsuit, where he testified that someone from the FCC's licensing bureau had called him at WUSS about the Frazier complaint, did Mr. Hayes admit that the Frazier lawsuit was a matter of concern to the FCC at the time. Tr. 1512-13. The lawsuit was a personal embarrassment to Mr. Hayes and was reported in local newspapers. Tr. 1441-42.

Issue 2 : Comparison of the applicants

Full-time participation in station operation by owners

14. *ACCBI* is a corporation that has two stockholders; Lawrence A. Hayes owns all the voting shares and purportedly 60% of the equity and Fred Anderson, who is also known as Eric Anderson, owns 100% of the nonvoting shares and purportedly 40% of the equity. ACCBI Exh. 1. Lawrence Hayes proposes to become the general manager of the facility. ACCBI Exh. 2, at 2. All applicants were ordered to identify the material elements of their comparative proposals by December 20, 1988 and in that statement, which Mr. Hayes signed, he did not indicate any minimum or maximum hours. Tr. 199-201. When ACCBI exchanged written testimony on June 20, 1989, Mr. Hayes represented for the first time that he would work full time, 40 hours per week. ACCBI Exh. 2, at 2. He was not allowed to vary from his initial statement and improve his comparative proposal. Tr. 200. As general manager Mr. Hayes states that he will "perform all duties commonly associated with the position of general manager." ACCBI Exh. 2, at 2. He will adopt all policies, will be responsible for sales and management, hire and fire, ascertain community needs, and develop public service and public affairs programming. *Id.*

15. Mr. Hayes is an African American and has been a resident of Atlantic City for 10 years. ACCBI Exh. 2, at 3. During those years he has participated in civic activities which have included the Special Task Force of the Casino Control Commission, Chairman of the Minority Entrepreneur Development Corp., Program Coordinator of the Atlantic City Hebrew Academy, member of the Board of Directors of the Chamber of Commerce and membership in a number of other groups. ACCBI Exh. 2, at 6-8; Tr. 218-225. Mr. Hayes has 38 years of broadcast experience. ACCBI Exh. 2, at 3-5.

16. Originally, Mr. Hayes was a 10.9% equity holder and general partner in a partnership that was being organized by Sonrise Management Services to apply for this facility. Tr. 78-80; D & L Exh. 6. Although he had signed a partnership agreement, he decided after discussing his participation with Fred Anderson and Richard Hayes, an attorney, to withdraw from the partnership. Tr. 80, 82, 86, 356. Mr. Hayes had intended to be the managing partner in a general partnership called Boardwalk Enterprises. D & L Exh. 6; Tr. 78-9, 90. At Mr. Anderson's suggestion, Mr. Hayes decided to form his own group for the Atlantic City facility.

17. When it was filed, the ACCBI application had seven non-voting preferred shareholders. ACCBI Exh. 6, at 1. The non-voting shareholders were people found by Mr. Hayes brother, John P. Hays, and included also Mr. Anderson. Mr. Hayes spoke with only one person in his brother's group, David Lee Body, and he told Mr. Body that Mr. Anderson was going to be involved in the proposal. Tr. 117. According to Mr. Hayes, the persons who joined the group with John Hays were to pay the "prestage" legal expenses. Tr. 131. Mr. Anderson testified that he had a financial responsibility to the corporation from the outset. Tr. 362-63. He said he split these costs with the Hays group. *Id.* After the Hays group left in March of 1989, because they had "had enough," Mr. Anderson assumed the role of sole investor. Tr. 371, 381-83. The post-grant, construction expenses, were to be paid by Anthony William Packer, a business associate and personal friend of Lawrence Hayes. Tr. 128, 131. Hayes asked Anderson to join because it gave him "comfort, to know that I had someone that I could talk to about radio who understood the industry." Tr. 150. Anderson has radio experience and had applied for another facility; for that reason Hayes believed that Anderson would be "kind of a right arm" to help him through the application procedure. Tr. 133, 134. For the past 23 years, Hayes and Anderson have usually talked to one another two or three times weekly. They have continued to have those con-

versations after the filing of the application. Tr. 147, 206. Hayes intends to continue to talk to Anderson on a weekly basis about the operations of the station. Tr. 206. He intends to talk to Anderson about programming and he would even hire Anderson to work at the station if he is available. Tr. 243-44.

18. Prior to the hearing, Messrs. John P. Hays, Jesse J. Ward, D. L. Body, Steve Erkins, W. Harold Washington and Oliver Lewis, Jr. paid the expenses. Tr. 361-62. After they turned in their stock, Fred Anderson assumed that role, Tr. 160, 363, and he now purportedly owns a 40% non-voting equity interest in ACCBI. ACCBI Exh. 1. Actually, while ACCBI claims in its written testimony that Anderson has 40% of the equity, Hayes and Anderson continue to each own 33 1/3% equity. Tr. 176. Hayes believes that eventually he will hold 60% of the equity. Tr. 347. Corporate documents indicate that that is the case. ACCBI Exh. 7. Mr. Anderson has always raised all money needed from the non-voting shareholders and paid all bills after Mr. Hayes reviewed and approved them. Tr. 154, 364, 366. Mr. Anderson recommended his communications lawyer, John Hayes, to Mr. Hayes and he also suggested that he hire his engineering firm. Tr. 87, 120, 391. Anderson has complete control over ACCBI's checking account. Tr. 155-57, 364. Originally Anderson was to receive his equity for the work he was doing, but since the six contributors withdrew, he has contributed money. Tr. 158, 160-63, 396. Anderson has no written financial obligation and does not know the extent of his obligation. Tr. 394, 395.

19. Mr. Hayes could not explain why Oliver Lewis testified at deposition that he had told Lewis that Anderson would be working at ACCBI's station. Tr. 257. Hayes intends to resign his position as general manager if he is not productive. Tr. 214. He stated at his deposition that he also expected to give up some of his stock in the future. Tr. 237-38. Mr. Hayes' hearing testimony was in conflict on this point with his deposition testimony. *Id.* Mr. Hayes denied that he made public the fact that ACCBI had 100 shares available for sale. Tr. 249. His deposition testimony conflicts with his hearing testimony on that position also. *Id.* Hayes testified that he voluntarily left his employment at radio station WUSS. Tr. 209. He admitted at his deposition, however, that he was directed to cease working at WUSS by the trustee in bankruptcy of the station. Tr. 210-11.

20. *Radio-Vision* is a limited partnership with one general partner, Joseph M. Jacobs, who owns 20% of the equity and four limited partners, two individuals, George Polis and Maurice Stone, who each own 10% of the equity, a partnership, 1013 New Road Partnership, which owns 8% of the equity, and a corporation, Boardwalk Communications, Inc. (BCI), which was another applicant in the proceeding and as a result of a merger with Radio-Vision now holds 52% of the equity. Radio-Vision Exh. 1, at 1, Attach., at 1-2.

21. Mr. Jacobs proposes to work full time, a minimum of 40 hours per week as the general manager. Radio-Vision Exh. 3, at 1. He will formulate and implement station policy in all facets of the station and supervise day-to-day operation. *Id.* Mr. Jacobs currently practices law in Atlantic City as a sole practitioner. *Id.* He said that his practice is confined to real estate development and educational law. Tr. 745. He represents the Atlantic City Board of Education and various development companies. Tr. 747-48. He proposes to leave his practice and will notify his clients when he leaves. Radio-Vision Exh. 3, at 1-2. He has lived in Atlantic City most of his life except 1977-81, 1981-84 and September 1984 to February 1985. *Id.*, at 2. Mr. Jacobs, who is an African American, has participated in nearly a dozen local civic activities. *Id.*, at 2-6.

22. The merger resulted in BCI assuming 80% of the obligation incurred by Radio-Vision in prosecuting its application, up to $100,000. Radio-Vision Exh. 1, Attach., at 7. Mr. Jacobs will contribute 8.33%, Messrs. Polis and Stone 4.17% each and 1013 New Road Partnership 3.33%. *Id.* The construction and operations costs, which Radio-Vision projects will not exceed $400,000, are to be paid 60% by BCI, 16.67% by Mr. Jacobs, 8.33% by Mr. Polis, 8.33% by Mr. Stone and 6.67% by 1013 New Road Partnership. *Id.*, at 8. Capital calls beyond the $100,000 and $400,000 may be made "only with concurrence of the owners of a majority of the partnership's equity Ownership Interests." Radio-Vision Exh. 1, Attach., ¶ 4.05(7). The same consent is required for arbitration or the consent to arbitration of any disputes or controversies of the partners, an agreement in settlement of this case, and borrowing of funds for the construction and operation of the station. Radio-Vision Exh. 1, Attach., ¶ 4.05(1), (7), and (8). Mr. Jacobs, under the partnership agreement, as general partner, has no liability to the partnership or partners as long as he acts in good faith and the best interests of the partnership. *Id.*, at ¶ 4.06.

23. Before Radio-Vision merged, the applicant did not have a bank account and Mr. Jacobs paid the expenses out of his own funds. Tr. 761. He said that at some other time he would seek reimbursement from his limited partners.

24. *Knight* is a corporation with one shareholder, Norman Knight. Mr. Knight does not specify a position that he will hold at the station. Knight Exh. 1, at 1. He claims that as chairman of Knight Radio, Inc., he will participate, have duties and responsibilities in the management, policy and day-to-day matters of the proposed station, like those he now has at his other eight stations. *Id.* The time he will spend on the station's affairs will vary each week but he expects that it may well be "in excess of 20 hours per week at the outset until the station is performing at a level . . . [he] expects from each of his stations." *Id.*, at 2. The managers of the station will report to him on a weekly basis. *Id.*, at 3. He will respond to the reports by telephone or in writing. *Id.* Since he cannot be in five communities at once, he will be in regular contact with the station from Boston, on an "almost daily basis." *Id.*, at 5. He will visit the station on an as-needed basis. *Id.* He will install a line from the station to his Boston office that will allow him to listen to the station. *Id.*, at 14-15. Mr. Knight has worked at broadcast stations. *Id.*, at 12-13, 14. He worked as general manager of WABD-TV, New York City from 1953 to 1954 and as head of the Yankee Network from 1954 to 1960. *Id.*

25. *Hillside* is a limited partnership with one general partner, Della B. Baeza, who has a 50% equity interest, and one limited partner, Mario L. Baeza, the spouse of Della and the holder of a 50% equity interest. Hillside Exh. 1. The initial capital contribution of $10,000 was contributed equally by the partners, while subsequent contributions are made 30% by the general partner and 70% by the limited partner. Hillside Exh. 2, at 3. Ms. Baeza proposes to work full time, 40 hours per week, as the general manager. Hillside Exh. 3, at 3. She will ex-

ercise supervisory control over all facets of the station's operation. *Id.* Ms. Baeza lives in Englewood, New Jersey, which is 150 miles from Atlantic City, but she will establish an additional residence in Atlantic City. *Id.* She will commute between Englewood and Atlantic City on weekends and once or twice a week. *Id.* Ms. Baeza has two children, who were 2 1/2 years old and 14 1/2 months old on the day of her hearing testimony, July 20, 1989. Tr. 1027. Ms. Baeza is a female African American. Hillside Exh. 3, at 1.

26. Ms. Baeza heard about the availability of the Atlantic City frequency from Morton Berfield. Tr. 1033; she met him through her spouse. Mr. Baeza owned 14% of Magna Media Corporation, which Mr. Berfield represented. Magna Media had a pending application for two New York facilities at the time Hillside filed its proposal. *Id.* Mr. Baeza proposed to work at those stations, if Magna Media's application was granted. Tr. 1033-34. That proceeding was settled on May 17, 1989 and Magna Media dismissed its application in payment for $3,500,000. Ms. Baeza stated that she had not discussed with her spouse his integration proposal for Magna Media before filing the Hillside application. Tr. 1037. Nor did they ever discuss his becoming a general partner in Hillside. Tr. 1035-36. She did concede that she knew that her spouse could not propose integration in both applications. Tr. 1038. Ms. Baeza is employed at Clairview Window Manufacturers, a company which is owned by her spouse. Tr. 1028. She stated that she works full time at that business but receives no salary. Tr. 1027-28.

27. Ms. Baeza said that she is interested in being involved in broadcasting. Tr. 1032. However, she did not participate in the preparation of the proposal. Mr. Berfield flew to New York a few days before the application was filed and she met him at Mr. Baeza's law office. Tr. 1041. Ms. Baeza then reviewed the application. Tr. 1039. Mr. Berfield prepared the application, retained the engineer, advanced funds for the engineer, arranged for publication, prepared the partnership agreement, filed the agreement with the state, located the transmitter site, and established the public inspection file. Tr. 1042, 1067, 1043, 1044, 1047. Ms. Baeza has no power to terminate the partnership agreement without the affirmative consent of her spouse. Tr. 1067; Hillside Exh. 2, at ¶ 6. Hillside has no bank account, although the partnership agreement states that the general partner will establish one. Tr. 1047; Hillside Exh. 2, at ¶ 17. Ms. Baeza did visit Atlantic City in order to familiarize herself with the city. Tr. 1043. She said she also prepared the budget with Mr. Berfield. Tr. 1045. However, she was not responsible for compiling or checking the information that was used for the budget. Tr. 1045-46.

28. Ms. Baeza testified at her deposition that her auxiliary power proposal consisted of "an auxiliary antenna [which] would operate in the event of a problem with the main antenna." Tr. 1057. Ms. Baeza explained that there would be a microwave link from the studio to the main antenna and that if something went wrong a backup would be necessary. Tr. 1058. She represented that she had received an equipment proposal for the secondary antenna. Tr. 1058. During her deposition, Mr. Berfield attempted to physically restrain her from testifying further about the antenna. Ms. Baeza changed her story concerning auxiliary power only after she had an opportunity to speak with her counsel. Ms. Baeza claims she now understands that her auxiliary proposal involves a backup power source. Tr. 1059. Ms. Baeza conceded that the only figure she contributed to the budget was her salary. Tr. 1079. She felt the salary proposed by Mr. Berfield was too low. *Id.*

29. Ms. Baeza worked in the ABC legal department from July 1981 to November 1986. Hillside Exh. 3, at 2. She oversaw civil litigation which was primarily carried out by law firms hired by ABC. Tr. 1049. She never held a job at a station; she only worked for the parent company. Tr. 1050. During discovery, Ms. Baeza did not provide any documents in response to requests about her broadcast experience. Tr. 1051.

30. *Wireless* is a limited partnership with one general partner, Richard Young, who holds 30% of the equity, and three limited partners, Andrew B. Burak, who also holds 30% of the equity, and Noel Eisenstat and William L. Busch, who each hold 20% of the equity. Wireless Exh. 1, at 1. Mr. Young proposes to become the full-time, 40 hours per week, general manager of the facility. Wireless Exh. 2, at 1. He will supervise the operations, develop station policy and generally oversee the station. *Id.* Mr. Young has lived in Atlantic City since 1987 and, although he has participated in civic affairs, he began those activities after the Wireless application was filed. Wireless Exh. 2, at 2. He belongs to four local organizations. *Id.* Mr. Young is an African American. *Id.*

31. The Wireless limited partnership agreement does not prohibit limited partners from performing services for the partnership. Hillside Exh. 6, at 5-7. Nor are limited partners restricted in communicating with the licensee or general partner on matters pertaining to the day-to-day operations of its business. *Id.* There is no provision prohibiting limited partners from providing services to the station. *Id.* Mr. Young has never worked in a business enterprise. Tr. 1211. He did not know the limited partners, Busch or Burak, who were suggested by counsel. Tr. 1213-14. And he has never discussed the proposal with the limited partners. Tr. 1242, 1245. Nor has he discussed the partnership agreement with them. Tr. 1214-15. Mr. Young signed the agreement when he received it. Tr. 1218-19. There is no testimony about how Mr. Eisenstat became involved in the application. Mr. Young has not provided any information about himself to the limited partners. Tr. 1233. Mr. Young first learned about the facility from some business people in the spring of 1987 and he then obtained a list of attorneys. Tr. 1211-12. It was one of those attorneys, Arthur Belendiuk, who was hired, and he suggested that Mr. Young form a limited partnership. Tr. 1212, 1219.

32. *D & L* is a general partnership with two general partners, Reginald N. Lavong, who owns 51% of the equity, and Sandra DelGiorno, who owns the remaining 49% of the equity. D & L Exh. 1, at 1. Mr. Lavong proposes to work full time, 40 hours per week, as the general manager. D & L Exh. 3, at 1. Mr. Lavong will supervise and direct station affairs, establish and implement policies, and establish the station. D & L Exh. 3, at 1. Ms. DelGiorno proposes to work full time, 40 hours per week, as community relations director. D & L Exh. 4, at 1. Ms. DelGiorno can be replaced by Mr. Lavong and she will defer to him on station policy, including programming. Tr. 1280, 1357. Mr. Lavong offered Ms. DelGiorno the position of community relations director when they met for the first time. Tr. 1277-78, 1342-43. There was no discussion of her taking any other position.

Tr. 1278-79. In that position she will be "a liaison between the station and the community's civic leaders and general population." D & L Exh. 4, at 1.

33. Mr. Lavong does not live in Atlantic City but he would move there if D & L's application is granted. D & L Exh. 3, at 1. Mr. Lavong is an African American. *Id.*, at 4. He has extensive broadcast experience. Except for 1968 to 1971, he has worked at radio stations since 1960 in both managerial and talent positions. D & L Exh. 3, at 4-5. Mr. Lavong stated he would be free to become general manager because the station he is general manager of is being sold. Tr. 1253.

34. Both Mr. Lavong and Ms. DelGiorno currently live in Philadelphia. D & L Exh. 4, at 4; D & L Exh. 3, at 1. Ms. DelGiorno and her spouse have had another home in Longport, New Jersey since July 1987. D & L Exh. 4, at 2. Ms. DelGiorno lives there most of the time during June, July, and August. D & L Exh. 4, at 2. She has spent parts of each summer there for 17 years. D & L Exh. 4, at 2. If the D & L application is granted, she will move to Longport, which is within the 70 dBu service area. D & L Exh. 4, at 2. Ms. DelGiorno claims that she spends half of her time in Longport and half in Philadelphia. Tr. 1286, 1325. But she votes, works, and has registered her car in Pennsylvania. Tr. 1350, 1357. Ms. DelGiorno is the office manager at her spouse's medical office in Philadelphia. D & L Exh. 4, at 4.

35. While the partnership agreement provides that the profits from the partnership will be split 51-49, Wireless Exh. 4, the agreement does not provide for voting. When Mr. Lavong was asked at his deposition how voting would be done, he said that he and Ms. DelGiorno would vote equally. Tr. 1283. At the hearing, the partners claimed that Mr. Lavong would have 51% of the vote and Ms. DelGiorno would have 49%. Tr. 1267, 1350. The partnership agreement also provides that attached to the agreement will be an exhibit which will list the contributions that each partner has agreed to provide. Wireless Exh. 4. Mr. Lavong said he had never seen it, Tr. 1271, and none was produced during document requests. Tr. 1272-73. Mr. Lavong also said that the books of account required by the partnership agreement have not been established. Tr. 1281.

36. Ms. DelGiorno heard about the facility from Mr. Lavong. Tr. 1306. Her spouse, who is a doctor, broadcasts on the station where Mr. Lavong is the manager. Tr. 1287. Mr. Lavong was looking for someone who was female and lived in Atlantic City and he selected Ms. DelGiorno for that reason. Tr. 1274-75. Mr. Lavong prepared the budget, retained legal and engineering counsel, prepared the application and decided they should organize as a general partnership, without any assistance from Ms. DelGiorno. Tr. 1275-77, 1295-96, 1307-10.

Diversification of control of the media of mass communications

37. ACCBI and its shareholders have no attributable mass media interests. ACCBI Exh. 1. Radio-Vision and its partners have no mass media interests. But four stockholders in BCI, Radio-Vision's 52% limited partner, have media interests. Jonathan A. Gelula, BCI's 10% equity holder and only voting stockholder, Lee A. Levine, a nonvoting stockholder in BCI and 49.25% equity holder, Arthur E. Sklar, a 12.25% equity holder in BCI, and Allan C. Staller, a 12.25% equity holder and nonvoting stockholder, own individually but in total 3.12% of Caravelle Broadcast Group, Inc. Radio-Vision Exh. 2. Caravelle holds seven broadcast licenses for stations in North Carolina, South Carolina, and Vermont. Mr. Levine's law firm owns 1.25% of the non-voting preferred stock in Caravelle; he also has an indirect small interest in CMS Panache Broadcasting Associates, L.P. *Id.* Radio-Vision and its other owners have no mass media interests. Radio-Vision Exh. 2, at 1.

38. Mr. Knight is the licensee of WGIR AM/FM, Manchester, New Hampshire and WEZF-FM, Burlington, Vermont, and Knight Communications, 100% owned by Mr. Knight, is the licensee of WTAG(AM)/WSRS-FM, Worcester, Massachusetts. Knight Exh. 1, at 15. Knight Broadcasting of New Hampshire, Inc., 100% owned by Mr. Knight, is the licensee of WHEB AM/FM, Portsmouth, New Hampshire. *Id.* Quality Radio, Inc., 100% owned by Norman Knight, is the licensee of WSAR(AM), Fall River, Massachusetts. *Id.* Norman Knight is the chairman of the board and one of two trustees of two trusts which own 100% of Caribbean Communications Corporation, the franchisee of a CATV system in St. Thomas and St. John, U. S. Virgin Islands. *Id.*, at 15-16. Norman Knight is chairman and owns 100% of Knight Sales, Inc., an organization representing Knight Quality Stations for regional and national sales. *Id.*, at 16.

39. Hillside and D & L and their owners have no attributable media interests. Hillside Exh. 3, at 1. D & L Exh. 2, at 1; Tr. 1252. Wireless submitted no evidence regarding its mass media interests.

Auxiliary power proposals

40. ACCBI proposes to install an auxiliary power source at the transmitter site. ACCBI Exh. 3. Radio-Vision, Radio-Vision Exh. 4, Knight, Knight Exh. 1, at 14, Hillside, Hillside Exh. 3, at 4, and D & L, D & L Exh. 5, also propose auxiliary power. Wireless does not propose any.

Comparative coverage

41. The remaining applicants are ACCBI, Radio-Vision, Knight, Hillside, Wireless and D & L. The following data is based on Joint Exhibit No. 1, sponsored by all of the applicants.

42. The following table lists the total areas and populations within the applicants' 1 mV/m contour.

TOTAL AREAS AND POPULATIONS

Applicant	Area (sq. km.)	Population
ACCBI	1,908	218,401
Radio-Vision	1,074	187,839
Knight	1,805	215,379
Hillside	1,074	187,839
Wireless	1,323	196,357
D & L	1,805	215,379

43. Areas and populations which receive fewer than five aural services are served in common by all of the applicants.

CONCLUSIONS

Issue One: ACCBI's failure to report the judgment by the New Jersey Superior Court that WUSS and Lawrence Hayes had engaged in discriminatory, illegal conduct requires that ACCBI be disqualified.

44. The Commission's Form 301 requires that applicants report adverse findings by courts of law against parties to the application, when they involve violation of laws prohibiting discrimination. Such a judgment was entered on June 2, 1986 by the Superior Court of New Jersey, after a jury verdict, about the conduct of Lawrence Hayes. Mr. Hayes is the only voting common stockholder, officer and director of ACCBI. He completed the application for ACCBI and he has been a broadcaster for 38 years. During the summer of 1984, Lenore Frazier was employed at WUSS in Atlantic City, New Jersey where Lawrence Hayes was then the General Manager and EEO Director. Ms. Frazier filed a Complaint against WUSS and ten John Does in New Jersey Superior Court, alleging that the station and the John Does had violated the New Jersey Civil Rights statute which grants to its citizens the right to be free of sex discrimination in their employment. A jury found that Mr. Hayes made sexual overtures to Ms. Frazier and when she repelled his advances she was fired. She was awarded compensatory and punitive damages.

45. It is apparent that Mr. Hayes intentionally withheld the court's adverse finding when he completed the Form 301. When Mr. Hayes responded to the petition to enlarge about why he did not report the jury verdict, he said Ms. Frazier's suit was one of a disgruntled employee, that he was not named in the suit, it did not involve discrimination, it was "blackmail" by someone "his news director" fired and, therefore, he believed he did not need to report the adverse judgment. However, by the time he arrived at the hearing, he changed his story and said that the case never entered his mind. The evidence shows that his asserted reasons are no more than a pretext for excusing his actions.

46. His initial reasons for not reporting the New Jersey court's judgment are inconsistent with his own deposition testimony and the official records of the case. There is little question that Mr. Hayes was one of the John Does mentioned in the Complaint. The Complaint describes the conduct that led to the suit and that conduct was the sexual overtures made by Mr. Hayes to the complainant, Lenore Frazier. Ms. Frazier, moreover, alleged and proved that when she did not give in to Mr. Hayes' overtures, she was fired. After deliberating less than an hour a jury found that that was the case. There was no finding that Ms. Frazier was "disgruntled" or that the suit was "blackmail." In addition, it was evident that Mr. Hayes' actions were discriminatory since the complaint was filed pursuant to the New Jersey statute which prohibits sex discrimination. Mr. Hayes' response to the petition to enlarge was simply disingenuous. He had earlier testified at a deposition session that he was a party to the suit and that it involved discrimination.

47. The excuse put forward at the hearing for not reporting the suit, that it never entered Mr. Hayes' mind, is improbable. Mr. Hayes testified that local newspaper articles had been written about his conduct and these had been a source of embarrassment for him. Mr. Hayes was the manager of the station and was personally responsible for implementing EEO regulations at the station. When Ms. Frazier brought her action, Mr. Hayes hired a lawyer, testified at the trial, and made the decision that the verdict should not be appealed. He was left by the owners of the station to make these decisions totally on his own. It is even less likely that he would not have thought about the judgment since it had been entered only the summer before the application was filed. But even more significant, Mr. Hayes knew the suit was of interest to the Commission. He testified during the Frazier case that the Commission's staff had called him about the allegations and he said he was concerned that the case would have an effect on the renewal of WUSS' license. Finally, Mr. Hayes claims that he completed ACCBI's Model EEO proposal for the application. The instructions for preparing an EEO proposal specifically refer to sex discrimination eighteen different times. There is no reliable evidence that supports any of the excuses Mr. Hayes gave for not reporting the Frazier case. Instead, the evidence shows that he deliberately failed to report his discriminatory conduct which he knew was of interest to the Commission.

48. The facts surrounding Mr. Hayes' failure to report the case are not the only issue of concern. The Commission has long had rules that prohibit broadcast stations from discriminating against female employees. Indeed, since 1976, Mr. Hayes has been in charge of implementing and enforcing this prohibition at broadcast stations. That was his role at WUSS, Atlantic City, when he made the sexual overtures to Ms. Frazier and she was fired for refusing them. Mr. Hayes was also the general manager of the station and, by his own testimony, he claims that he was unsupervised in making all decisions about the station. Thus, his illegal conduct under New Jersey law was also conduct specifically prohibited by the Commission and it was conduct which he personally engaged in. Mr. Hayes' ultimate fall back position was that he thought that the only discrimination that the Commission cared about was race discrimination. There is overwhelming evidence he knew that that was not the truth. As already pointed out, the Commission called him about the case and he filled out the model EEO application which repeatedly refers to sex discrimination. The record reflects that he had available at the station materials prepared by the National Association of Broadcasters which specifically dealt with Ms. Frazier's complaint and the care that needed to be taken when faced with such a complaint. Mr. Hayes urged in this proceeding that he would be an ideal manager because he would oversee the station's EEO policies. His record shows that since 1976, when he first became responsible for EEO, he did nothing to inform the station's employees about those obligations. Mr. Hayes' behavior surrounding this matter, at the station and before the Commission, shows him to be unreliable and untrustworthy.

49. Mr. Hayes' testimony about the issue was deceitful. Initially when he was asked about the suit at his deposition, he conceded it was about his acts of discrimination which the complainant characterized as sexual harassment. He admitted he knew that he was a defendant and that the case involved discrimination. Contrary to all objective evidence, he changed his testimony and said he was not a defendant and that it was not a matter involving discrimination. At first, he testified that the suit was lost because the lawyer he hired did not show up. But the record reflects that the lawyer appeared and defended Mr.

Hayes' actions, that Mr. Hayes testified, and that he made the decision about who to hire and under what conditions the lawyer would be hired. Mr. Hayes also claimed he did not know that the Commission was concerned about sex discrimination. At the same time he maintained he had prepared the model EEO proposal and had read the instructions which refer repeatedly to discrimination on the basis of sex. He also testified that the Commission had not contacted him about the case and he did not change his testimony until he was shown his own deposition in the Frazier case where he stated that the Commission had called him. During his testimony, Mr. Hayes was untruthful and withheld the true facts about his conduct. He frequently had to be confronted with objective evidence before he would agree to the facts as they really were. The likelihood is that ACCBI will not conform to Commission regulations. ACCBI is directed by Lawrence Hayes, who withheld material information about his character on Form 301, he engaged in conduct as a station manager which is contrary to Commission rules and policy, and he lied in the course of a Commission proceeding about his conduct. ACCBI is not qualified to become a Commission licensee.

Issue 2 : The comparative proposal that will best serve the public interest

Quantitative integration proposals

50. *Knight* is a corporation with one shareholder, Norman Knight. Mr. Knight does not propose to occupy a specific managerial position in the day-to-day operation of the Atlantic City facility. While he claims that he will have a management and policy role at the station, he concedes that the time he will spend on the station's business will vary each week and will be in excess of 20 hours only at the outset. He will not live in Atlantic City but he will be in regular contact with the station from Boston. In Boston he currently oversees eight stations in five cities. As is his practice with the stations he currently operates, he will only visit the Atlantic City facility on an as-needed basis.

51. While the Commission does not require that a manager work at the station a certain number of hours, he must indicate how many hours he will spend managing. At the same time, while he need not be present at the station on a daily basis, "integration credit depends upon a principal's presence at the station on a regular, periodic basis." *Omaha TV 15*, 4 FCC Rcd 730, 733 (1988). In addition, the Commission looks to the position participating owners will occupy, in order to determine the extent of their policy functions and the likelihood of their playing an important role in the management. It is the Commission's policy that "there is a likelihood of greater sensitivity to an area's changing needs, and of programming designed to serve these needs, to the extent that the station's proprietors actively participate in the day-to-day operation of the station." *Policy Statement on Comparative Broadcast Hearings*, 1 F.C.C.2d 393, 395 (1965).

52. Mr. Knight will not have a regular management role at the station that will involve him in understanding the area's changing needs. His promise is only to listen to the station long distance in Boston, read written weekly reports from the actual managers, and respond by telephone or in writing to their reports. He will not be at the station on a regular, periodic basis and the number of hours he will devote to the station is indefinite. Knight's integration proposal does not meet the Commission's requirements for an integration pledge that can be credited. Knight will not receive any integration credit.

53. *Wireless* proposes that its general partner, Richard Young, who holds 30% of the equity and purportedly all of the control, will work full time, 40 hours per week, as the general manager. Wireless has three limited partners who own the remaining 70% of the equity. Hillside urges that, at most, Wireless can be credited with integration equal to the equity interest Mr. Young holds. Hillside urges that Wireless should be limited to Mr. Young's 30% equity interest because Wireless' partnership agreement has not provided the necessary provisions to insulate the general partner from the influence of the limited partners. Wireless responds to that argument by pointing out that in its partnership agreement the limited partners have promised that they will not be materially involved in the management or operation of the station. Wireless urges that their statements are all encompassing and that the specific insulating provisions listed by the Commission in the instructions to Form 301 need not be literally followed.

54. The Form 301 instructions for "Section II - Legal Qualifications" provides that limited partners are not considered parties if the limited partners "are not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership ...". The Commission stated that it would be sufficient if the limited partnership agreement specifies that any exempt limited partner cannot act as an employee; bars an exempt limited partner from serving as an independent contractor or agent; restricts any exempt limited partner from communication with the licensee or the general partner on matters pertaining to the day-to-day operations; empowers the general partner to veto any admissions of additional general partners by vote of the exempt limited partners; prohibits any exempt limited partner from voting on the removal of a general partner or limits this right to situations where the general partner is subject to bankruptcy proceedings, is adjudicated incompetent by a court, or is removed for cause, as determined by an independent party; bars any exempt limited partner from performing any services for the station; states in express terms, that any exempt limited partner is prohibited from being actively involved in the management.

55. The Wireless partnership agreement does not prohibit limited partners from performing services for the partnership. Limited partners are also not restricted by the partnership agreement in communicating with the licensee or general partner on matters pertaining to the day-to-day operation of the media business. The agreement does not bar an exempt limited partner from serving as a contractor or agent. It also does not empower the general partner to veto admission of additional general partners by vote of the exempt limited partners. The agreement appears to be silent about whether the limited partners could select new general partners and, if they did, whether the general partner could veto their choice.

56. Wireless urges that because § 10. C. of its partnership agreement prohibits the general partner from contracting with firms or corporations in which the limited partners have an interest, the limited partners are "effectively" prohibited from becoming independent contractors to the station. The provision is silent about whether the general partner could contract with the limited partners

individually. The burden is, as the Commission has emphasized, on Wireless to demonstrate that the limited partners will not participate in or influence the operation of Wireless' media business. The partnership agreement is incomplete or silent about specific areas in which the Commission requires that limited partnership agreements be limited if a partnership is to certify that a general partner is insulated from the limited partners.

57. Wireless' response that the general partner, Richard Young, certified that he would be insulated carries little meaning in the context of Wireless' proposal. The partners never discussed the partnership agreement; they do not know one another. Indeed, Mr. Young had not met all the limited partners when he signed the agreement. If they have any intentions with regard to the facility, Mr. Young has no way of knowing what they are. Mr. Young did not participate in preparing the partnership agreement and he signed it without questioning a single provision. There is no evidence that he insured that he would be insulated before he certified. Under such circumstances the Commission has little choice but to look to the face of the agreement and in that respect the Wireless partnership agreement lacks the necessary insulating provisions. At most, Wireless is entitled to integration credit for Mr. Young's proposal to manage only to the extent he holds equity. Wireless will be credited with integration of 30% of its owners.

58. *D & L* is a general partnership with two general partners, Reginald N. Lavong, who claimed at the hearing that he would have 51% of the control, and Sandra DelGiorno, who claims to have 49% of the control. Both propose to work at the station. Mr. Lavong would work full time, 40 hours per week, as the general manager. Ms. DelGiorno proposes to work full time, 40 hours per week, as community relations director. The opposing applicants question whether Ms. DelGiorno is a general partner that will influence policy and play an important role in management. It is their argument that she will not actually manage and that she was selected only for the short term benefit she would bring to D & L's comparative proposal. Ms. DelGiorno claims to be a local resident and is, of course, entitled also to female credit. She also maintains that she has participated in a local civic activity. These are qualities that Mr. Lavong does not have.

59. The partnership agreement does not allocate how partners will vote; it only allocates how partners will share in the return from the business. Mr. Lavong, on that basis, will receive 51% of the profits and Ms. DelGiorno 49%. There is only the word of the partners on which to base a determination of how the partnership will work. There appears to be little question that Mr. Lavong will exercise 51% of the control, the question is whether or not he will exercise all of the control.

60. Mr. Lavong is currently a broadcast station manager in Philadelphia. He initiated the proposal for Atlantic City and he decided to ask Ms. DelGiorno to join him because she would improve the applicant's qualitative comparative posture on the criteria of local residence, civic participation, and female enhancement. All of these are qualities that Mr. Lavong, who is African American and lives in Philadelphia, lacks. Ms. DelGiorno has not participated in the formation and pursuit of D & L's proposal. Mr. Lavong has done all the work that needed to be done, including determining that the applicant would organize as a general partnership. Ms. DelGiorno also has stated that she will defer to Mr. Lavong on station policy and programming. Her role will be to act as liaison between the station and the community. She has not been assigned any specific policy or programming job. That, too, was decided by Mr. Lavong and there was no discussion between them before he made that choice. Moreover, Mr. Lavong has the authority to replace Ms. DelGiorno at will. They have no history of friendship or working together; Ms. DelGiorno did not know Mr. Lavong before this application was filed. Her spouse, who is a doctor, has a radio show at the station where Mr. Lavong is the general manager.

61. It is also apparent that the general partnership agreement is not a good guide to the relationship between Ms. DelGiorno and Mr. Lavong. Not only does that document not provide for a method of voting, but Mr. Lavong himself appears uncertain about how votes will be cast. At his deposition, he claimed that the partners would have equal votes but at the hearing he said voting would be done according to each partner's share of the equity. Nor has the partnership agreement been followed even when it does provide a method for conducting partnership business. The agreement provides that there is to be a partner contribution schedule, but none has ever been established. And the agreement requires the partners to establish books of account, but none have been created.

62. From these facts, it cannot be concluded that Ms. DelGiorno has a bona fide role in the D & L partnership. She has no real management role at the station and she has had no part in developing the proposal. It appears that she has been selected to improve D & L's paper proposal without any intention that she act as a partner and hold policy and managerial roles at the station. Because Ms. DelGiorno's participation was not a good faith business decision on D & L's part, it must be concluded that its proposal is a sham and comparative credit will not be given. *Northampton Media Associates*, 3 FCC Rcd 5164, 5170-71 (Rev Bd. 1988), *review denied*, 4 FCC Rcd 5517 (1989).

63. *Radio-Vision* is a limited partnership with one general partner, Joseph M. Jacobs, and four limited partners, one of whom, BCI was a separate applicant in the proceeding until it merged with Radio-Vision. Mr. Jacobs, who owns 20% of the merged applicant, proposes to work full time, 40 hours per week, as the general manager. Radio-Vision claims that Mr. Jacobs holds 100% of the control. The competing applicants urge that Radio-Vision cannot be considered an insulated partnership.

64. First, they argue that BCI's non-voting shareholders were actively involved in BCI's business affairs before the merger with Radio-Vision when they had represented to the Commission that they would not be. Radio-Vision correctly argues that the only actions by which the partnership can be judged are those which took place after the merger. There is no evidence that BCI or its owners have been involved in the business affairs of Radio-Vision following the merger and those actions which that took place before the merger are not relevant. *See Coast TV*, FCC 90-120, released April 27, 1990, at ¶ 16 and n. 5 ("[w]here an applicant adopts an ownership structure providing that a previously active owner will now have a passive role and thereafter adheres to that changed ownership structure without exception, the Commission ordinarily has reasonable assurance that the once active owner will not exercise any control or influence over the management of the ongoing licensee.").

65. It is also argued by Hillside that Mr. Jacobs is not insulated because Radio-Vision cannot construct the station without BCI's consent since BCI owns 52% of Radio-Vision's equity. Hillside argues that BCI could prevent Radio-Vision from borrowing money. Knight makes the same argument more specifically. Knight points out that Radio-Vision's partnership agreement limits the general partner's demands for capital contributions to $100,000 for prosecution of the application and $400,000 for construction of the station. According to the partnership agreement, additional money may be demanded of the partners only if a majority of the owners concur. The Radio-Vision partnership agreement, Knight explains, also grants to BCI the right to reject any settlement, to determine whether funds can be borrowed for the construction and operation of the station and to determine whether disputes can be submitted to arbitration. Knight argues that BCI can veto any plans the general partner may have by controlling money above the $100,000$400,000 amounts.

66. Knight also urges that the limited partners will have every incentive not to allow Mr. Jacobs to make significant decisions because they have agreed that he will not be liable for his acts as general partner. Knight claims that their influence has already been exhibited when Radio-Vision established a separate bank account after the merger. Preceding the merger, Knight points out, Mr. Jacobs paid all the expenses personally and then sought reimbursement from the limited partners. Knight infers that it was BCI's influence that caused this change.

67. Radio-Vision maintains that the consent of BCI will not be necessary since the partnership agreement provides adequate funds. Radio-Vision also conjectures about what would happen if any limited partner refused to provide capital that it is committed to provide. That argument, which Radio-Vision raises, and responds to, does not address the issue of what control BCI could exercise when more money than has been provided is needed. Knight and Hillside assume that the capital calls will be honored.

68. Radio-Vision's second argument is that the Commission does not believe that financial control is, in effect, the ability to control the business of the applicant. Radio-Vision cites the Review Board's decision in *Religious Broadcasting Network*, 3 FCC Rcd 4085, 4096 (1988) for support of that proposition. In that case, however, the Board held that just because a limited partner was providing most of the money for a facility, it did not mean the partner would control the applicant. It is quite another matter to urge, as the opponents do, that the right to raise money is controlled by the limited partners. When that right is coupled with the risk they have assumed from absolving Mr. Jacobs of his normal general partner's liability, it can be assumed that the limited partners will play a significant role in the financial business decisions of the applicant.

69. The amounts listed in the partnership agreement for construction and pursuit of the application are just estimates; Radio-Vision has provided no assurance that those amounts will not be exceeded. Clearly, the partners viewed the amounts listed as estimates or there would have been no need for the detailed provisions that were made for determining how funds for the proposal would be raised in the future. It is not the possibility that the limited partners will not provide the money they have promised that limits the general partner's role, but their authority to make the decision about when and how money will be raised. Here, because one limited partner controls 52% of the entity, that limited partner will have control over whether the entity raises money and how it will do so. Under the circumstances, there is every reason to believe that BCI will exercise influence or control over the ongoing business under Radio-Vision's partnership agreement. *Coast TV*, *supra*, FCC 90-120, released April 27, 1990, at ¶ 16. Radio-Vision is entitled to no more credit for Mr. Jacobs' integration promise than 20%, his equity in the applicant.

70. The opposing applicants also urge that Mr. Jacobs' promise cannot be credited because he is now actively involved in the practice of law. Mr. Jacobs stated that he will end his practice; the opposing applicants have not shown that there is a likelihood that he will not. Radio-Vision is entitled to 20% integration credit for Mr. Jacobs' promise.

71. *Hillside* is a limited partnership with one general partner, Della Baeza, who has an equity interest of 50%. Her spouse, Mario Baeza, holds the remaining 50% of the equity, as a limited partner. Ms. Baeza has promised to work full time, 40 hours per week, as the general manager of the station. The opposing applicants urge that Ms. Baeza should receive no integration credit because Hillside's proposal is a sham. They make this claim because Ms. Baeza did not organize the proposal and because when she applied her spouse was a principal in an application for New York City stations. They urge that because Hillside's counsel organized the proposal, it is apparent that Ms. Baeza is not sincere in her claim that she will operate the station. It is the opposing parties' belief that the real interested party is Ms. Baeza's spouse, Mario. They assert that Mr. Baeza would have applied but he could not legitimately promise to operate the Atlantic City facility because of his previously made promise to manage the New York City stations.

72. There is no evidence that Mr. Baeza intends to operate the station in Atlantic City. The record indicates that Hillside's proposal was prepared by its counsel and to some extent by Ms. Baeza. There is no indication that Mr. Baeza has done anything more than might be expected of a limited partner. When Ms. Baeza initially met with Washington counsel, she saw him at Mr. Baeza's office. Mr. Baeza is an attorney in a New York law firm. There is, however, no evidence that Mr. Baeza participated in that meeting.

73. It is the case that Ms. Baeza did little to organize the proposal. All material decisions about engineering, financing, and preparation of the application were made by Hillside's counsel, Morton Berfield. But, there is no suggestion by the opposing parties that Mr. Berfield is a real-party-in-interest. And Mr. Berfield's actions are those typically taken by lawyers. Ms. Baeza is also a lawyer and she has worked for the Washington firm of Covington and Burling and for the ABC broadcast network. Currently, she manages a window manufacturing firm owned by her spouse. She stated at the hearing that she would operate the station. Her promise is as plausible as any other made in this proceeding.

74. Knight argues that Hillside's proposal is not *bona fide* because the Baezas are married. But, as Hillside points out, that fact is not an impediment to integration credit without more evidence. *See Chester Associates*, 2 FCC Rcd 2029 (Rev. Bd. 1987). Hillside states that the partnership agreement between the Baezas insulates Ms. Baeza from Mr. Baeza's potential control. There is one

additional argument which the parties assert primarily to diminish Ms. Baeza's qualitative proposal. They urge that she will not live in Atlantic City because the commute from her home in Englewood, New Jersey, which is 150 miles from Atlantic City, is too far away to expect she will actually be in Atlantic City. In one respect, that claim also affects her promise to manage the station from day to day. If Ms. Baeza planned on making the drive each day, it might be an extraordinary feat, but she stated she would commute on weekends and possibly once or twice a week. There can be little doubt that that will be a difficult schedule but it cannot be said that it is impossible. Hillside is entitled to 100% integration credit.

Diversification of control of mass media

75. The record indicates that only Knight has attributable media interests. (The record is silent with regard to Wireless' media interests.) Knight owns eight radio stations which are located in New Hampshire, Vermont, and Massachusetts. He also owns cable systems in the Virgin Islands. All the other applicants are to be preferred over Knight on diversification.

Comparative coverage

76. Knight and D & L will cover 1,905 square kilometers, Wireless will cover 1,323 square kilometers, and Radio-Vision and Hillside will cover 1,074 square kilometers. Knight and D & L will provide a 1 mV/m signal to more people than the other applicants; they will serve 215,379 people. Wireless will provide the same signal to 196,357 people and Hillside and Radio-Vision to 187,839 people. Where there are substantial coverage differences in well served areas, the Review Board has awarded a slight preference. *Barton Broadcasting Co., Inc.* 104 F.C.C.2d 785, 790-91 (Rev. Bd. 1986). The Board found differences of 600,000 to 700,000 to be substantial. Where there are advantages which are less (42,000, 139,000, 180,000), the Board has awarded a very slight preference. *Id.* The difference between Knight/D & L and Radio-Vision/Hillside is 27,540. The Knight/D & L proposal is 19,022 people more than Wireless. The differences in this proceeding are too slight to make a comparative difference in the outcome of the case.

Auxiliary power

77. All of the applicants, except Wireless, propose auxiliary power and they are to be preferred over Wireless on the factor of auxiliary power.

Final comparison

78. The comparative resolution of this proceeding is decided on the basis of integration proposals. Only Hillside is credited with 100% integration. Knight is entitled to no integration credit and a demerit for his mass media holdings; Wireless is entitled to 30% integration credit; D & L is not entitled to integration credit; and Radio-Vision is entitled to only 20% integration credit. Because the difference between Hillside and the other applicants on quantitative integration is so great, the qualitative proposals are not of decisional significance. ACCBI is not entitled to comparison because it is unqualified. Knight receives a demerit because he owns 100% of eight broadcast stations. Wireless does not receive an auxiliary power preference. Because Hillside is substantially superior to all other applicants for its integration proposal, its application will be granted.[2]

ACCORDINGLY, IT IS ORDERED that the petition for leave to amend, filed May 7, 1990 by Knight Radio, Inc. IS GRANTED and the amendment IS ACCEPTED.

IT IS FURTHER ORDERED that the petition for leave to amend, filed December 29, 1989 by Knight Radio, Inc. IS GRANTED and the amendment IS ACCEPTED.

IT IS FURTHER ORDERED that the request to reschedule procedural dates, filed December 28, 1989 by Radio-Vision Communications, II, Limited Partnership IS GRANTED.

IT IS FURTHER ORDERED that the motion to accept reformated proposed findings of fact and conclusions of law, filed February 20, 1990 by Knight Radio, Inc. IS GRANTED.

IT IS FURTHER ORDERED that the motion to reopen discovery, filed January 31, 1990 by Knight Radio, Inc. IS DENIED.

IT IS FURTHER ORDERED that the applications of Atlantic City Community Broadcasting, Inc. (BPH-870826ME), Radio-Vision Communications II Limited Partnership (BPH-870826MF), Knight Radio, Inc. (BPH-870826MH), Atlantic Wireless Broadcasting Limited Partnership (BPH-870827MO), Reginald W. Lavong and Sandra M. DelGiorno d/b/a D & L Broadcasting (BPH-870827NC) ARE DENIED and the application of Hillside Broadcasting Limited Partnership (BPH-870827MK) for a construction permit for a new commercial FM broadcast station on Channel 297 B1 at Atlantic City, New Jersey IS GRANTED.[3]

FEDERAL COMMUNICATIONS COMMISSION

Edward J. Kuhlmann
Administrative Law Judge

FOOTNOTES

[1] For the sake of clarity, issue one has been rewritten in this order from the original designation order. *See Memorandum Opinion and Order*, FCC 89M-2533, released October 26,1989.

[2] On January 31, 1990, after the close of the record, eight months after the period for discovery had ended, Knight requested that it be permitted to conduct discovery about the financial qualifications of Radio-Vision, Hillside and Wireless. Aside from the inordinate untimeliness of the request, there are no financial issues outstanding about these applicants. The Commission's discovery process may be used only to explore existing issues. Knight's request will be denied.

[3] In the event exceptions are not filed within 30 days after the release of this Initial Decision, and the Commission does not review the case on its own motion, this Initial Decision will become effective 50 days after its public release pursuant to Sec. 1.276(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-238

In re Applications of

Jo-Al Broadcasting, Inc. (hereafter Jo-Al)	File No. BPH-880616MP
B & H Broadcasting System, Inc. (hereafter B & H)	File No. BPH-880616MQ
Patricia D. Camp & Ann E. Dupre' D/B/A Dupre' Broadcasting Co. (hereafter Dupre')	File No. BPH-880616MW

For Construction Permit
for a New FM Station on Channel 284A
in Texarkana, AR

HEARING DESIGNATION ORDER

Adopted: April 23, 1990; Released: June 4, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. Dupre' petitioned for leave to amend its application on October 31, 1989. The accompanying amendment was filed after October 7, 1988, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

3. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

4. Jo-Al proposes to locate its antenna on the existing tower currently utilized by station KTWN(FM), Texarkana, Arkansas. However, an initial engineering review of the application has revealed that the FCC and FAA values for the overall tower height (including antenna and all other appurtenances, and lighting) above ground level and overall tower height above mean sea level differ from the values submitted by Jo-Al. Specifically, the FCC and FAA overall tower height above ground level is listed as 137.2 meters while the overall tower height above mean sea level is listed as 243.8 meters. Jo-Al recorded an overall tower height above ground level in Section V-B, question 7(a)(2) as 136 meters and an overall tower height above mean sea level in Section V-B, question 7(a)(3) as 243 meters. However, because Jo-Al clearly proposes to locate on an existing tower of a Commission licensee, the staff could, drawing on the application as a whole, confidently verify its actual tower height by taking official notice of the tower height as found in the Commission's records for the licensed collocated facility. Accordingly, Jo-Al's application was properly found acceptable for filing. However, Jo-Al Broadcasting Inc., will be ordered to file an amendment to correct this discrepancy.

5. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

6. IT IS FURTHER ORDERED, That the petition for leave to amend filed by Dupre' IS GRANTED, and the corresponding amendment IS ACCEPTED to the extent indicated herein.

7. IT IS FURTHER ORDERED, That Jo-Al shall submit an amendment correcting the discrepancy between its values and those of the FCC and FAA for overall tower height above ground level and above mean sea level pursuant to paragraph 4, above.

8. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

9. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

10. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-239

In re Applications of

LEEMAY BROADCASTING SERVICES, INC. (hereafter "LeeMay")	File No. BPH-880805MV
(Rhonda L. Ricord & Jackson Samual Ott d/b/a) CENTRAL OKLAHOMA COMMUNICATIONS CO. (hereafter "Central")	File No. BPH-880810ML
BARRY EDWARD ROBB (hereafter "Robb")	File No. BPH-880811MI
ROBERT STICK (hereafter "Stick")	File No. BPH-880811ML

For Construction Permit for a New FM Station on Channel 261C2 (100.1 MHz) in Byng, Oklahoma

HEARING DESIGNATION ORDER

Adopted: April 23, 1990; Released: June 4, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Stick*. Section II, Item 4 of FCC Form 301 (October 1986) requires that an applicant specify its address (number, street, city, state) as well as the home address of each of its principals. Stick has not completed Item 4 correctly, listing a post office box number as his residence address. Accordingly, Stick must submit an amendment which gives all the information required by Section II, Item 4 to the presiding Administrative Law Judge after this Order is released.

3. *Other matters*. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and three of the captioned applicants have been unsuccessful. Accordingly, since no determination has been received as to whether the antennas proposed by Central, Robb and Stick would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

4. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

5. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower heights and locations proposed by Central, Robb and Stick would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

7. IT IS FURTHER ORDERED, That Stick shall submit an amendment which contains the information required by Section II, Item 4 of FCC Form 301, to the presiding Administrative Law Judge within 30 days after the release of this Order.

8. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

9. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

10. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

11. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-251

In re Applications of

COOKE-DONZE BROADCASTING, INC. (hereafter "Cooke")	File No. BPH-880531MO
NICDEM MEDIA, INC. (hereafter "Nicdem")	File No. BPH-880531MZ
MID-STATE PARTNERSHIP (hereafter "Mid-State")	File No. BPH-880615ME
TIGER BROADCASTING COMPANY (hereafter "Tiger")	File No. BPH-880615MF

For Construction Permit
for a New FM Station on Channel 230A
(93.9 MHz) in Columbia, Missouri.

HEARING DESIGNATION ORDER

Adopted: May 1, 1990; Released: June 4, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Nicdem.* Nicdem proposes to side-mount its antenna on the existing tower located at coordinates 38^0 57' 21"NL and 92^0 16' 24" WL. This tower is also the supporting structure of radio stations KARO-FM (BLH-830308AE) and KFMZ-FM (BLH-840806CY). However, a discrepancy exists in the records for these stations concerning the overall tower height above ground (AGL) and the overall tower height above mean sea level (AMSL). Nicdem reports that the height AGL is 140 meters and the height AMSL is 359.5 meters. Station KFMZ (FM) reports that the height AGL is 140 meters and the height AMSL is 370.3 meters, while KARO (FM) reports a height AGL of 134.1 meters. The values that are listed in the Commission's data base are 140.2 meters AGL and 370.3 meters AMSL. Accordingly, Nicdem will be required to communicate with KARO (FM) and KFMZ (FM) to resolve the discrepancy and to submit an amendment which contains the correct data to the presiding Administrative Law Judge within 30 days after this Order is released.

3. Mid-State petitioned for leave to amend its application on September 28, and October 6, 1989. Nicdem petitioned for leave to amend its application on June 15, 1989 and August 23, 1989. The accompanying amendments were filed after September 8, 1988, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

4. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

6. IT IS FURTHER ORDERED, that Nicdem submit an amendment which contains the information required by paragraph 2, above, to the presiding Administrative Law Judge within 30 days after this Order is released.

7. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Mid-State and Nicdem ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

8. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

9. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

10. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

METRO MOBILE CORPORATION — File No. 22749-CD-P/L-85

For authority to construct additional facilities in the Public Mobile Service on Frequency 152.24 MHz for Station KUO563 at Madison, Florida

MEMORANDUM OPINION AND ORDER

Adopted: May 29, 1990; Released: June 4, 1990

By the Chief, Mobile Services Division:

I. BACKGROUND

1. Metro Mobile Corporation ("Metro") filed the captioned application seeking authority to add an additional one-way transmitter location for Station KUO563 on frequency 152.24 MHz in the Public Mobile Service ("PMS") at Madison, Florida. Mobilphone & Beeper, Inc. ("Mobilphone"), licensee of Station KUS411 at Valdosta, Georgia, filed a "Petition to Dismiss or Deny" Metro's application. Metro filed an opposition, and Mobilphone filed a reply. Metro's application was selected first in a lottery held on April 11, 1990.[1]

II. CONTENTIONS OF THE PARTIES

2. In its petition, Mobilphone claims that Metro's application should be dismissed because the proposed station will cause harmful interference to Mobilphone's existing co-channel station. According to Mobilphone, the Carey curves[2] cannot be used to predict interference potential in this case because of the proximity of the stations, and Metro did not explain its methodology in making curve data assumptions or propagation predictions. In addition, according to Mobilphone, Metro's depiction of the antenna pattern and calculation of the effective radiated power ("ERP") in the direction of Mobilphone's Valdosta station are wrong. Mobilphone also maintains that Metro's antenna-gain figures are too low, and that there are inconsistencies in Metro's height above average terrain data. Finally, Mobilphone contends that although Metro has agreed to accept interference, the grant of its application is not in the public interest because potential subscribers would be provided service degraded by co-channel interference.

3. In its opposition, Metro explains that its propagation methodology consists of smoothly joining the individual Carey curves to converge at an unattenuated field strength of 102.79 dBu at one mile from the base station. Metro argues that this technique is consistent with the Carey Report, Section 22.15(b)(2) of the Rules, and has previously been accepted by the Common Carrier Bureau. In response to Mobilphone's allegations of inaccurate antenna-gain figures, Metro states that Mobilphone mistakenly focuses on the guaranteed minimum front-to-back ratio, ignoring the manufacturer's specifications. Furthermore, Metro asserts, it will adjust the antennas to provide an improved front-to-back ratio. As to asserted differences in terrain elevation data, Metro says they are too small to have any measurable effect on the pertinent contours. Metro maintains it used an accurate antenna radiation pattern and accurate terrain data, then employed a sound propagation analysis to determine that there would be no interference to Mobilphone's Valdosta facility.

4. In response to Mobilphone's allegations that its service will be degraded by co-channel interference, Metro states that the Commission has adopted a policy of permitting applicants to accept co-channel interference. In addition, Metro points out that interference-free service will be provided in Madison, its environs, and a large part of Interstate Highway 10 between Tallahassee and Jacksonville, Florida. Moreover, Metro states, the area subject to interference is a rural area north of Madison which will not materially affect Metro's customers.

III. ADDITIONAL INFORMATION

5. The Mobile Services Division ("MSD") requested that Metro submit pertinent antenna information. *See* Letter from Michael D. Sullivan to John Spencer (July 29, 1985). Metro filed an amendment to clarify some apparent confusion regarding the nomenclature of the antenna proposed. The MSD then requested additional information from Metro: the manufacturer's measured pattern for the combination of antennas proposed; a description as to the manner the antennas are to be mounted and phased; a statement from the manufacturer giving the front-to-back ratio for the combination; the horizontal pattern with sufficient detail to determine the antenna gains in the direction of Mobilphone's Station KUS411 at Valdosta; and the extrapolated curves used to calculate Metro's reliable service and interference contours. *See* Letter from Michael D. Sullivan to John Spencer (Sept. 17, 1985). In response, Metro filed amendments clarifying its proposal.

IV. DISCUSSION

6. An application which would cause harmful electrical interference to an authorized station cannot be granted. *See* Section 22.32(b)(3) of the Rules. Based on our review of Metro's proposal we conclude that its proposal will not cause harmful interference to Mobilphone's co-channel station at Valdosta. Our review of Metro's amendments have clarified to our satisfaction its antenna pattern, [3] antenna gain figures and calculation of ERP. We also find Metro's method for determining the interference and reliable service contours to be reasonable. Furthermore, we find the minor differences in the heights above average terrain along Metro's co-channel radial to Mobilphone's Valdosta station to be decisionally insignificant. We find that Metro has utilized sound engineering methodologies, and our review of the application and amendments leads us to conclude that Mobilphone's allegations are meritless.

7. Moreover, we have examined Metro's proposed reliable service area and have determined that the interference from Mobilphone will be in a rural area north of

Madison. Therefore, Metro will provide reliable service to Madison, its main service area. The Commission has adopted a policy of permitting a licensee or applicant to accept co-channel interference. *See, e.g., American Paging Inc. (of Ohio)*, Mimeo No. 2664 (Com. Car. Bur. released Feb. 20, 1985). When an applicant does not cause interference to any co-channel facility and agrees to accept co-channel interference, Section 22.100 of the Rules, which requires assignment of frequencies on an interference-free basis in each service area, is not violated. *See also RAM Communications of Massachusetts, Inc.*, 4 FCC Rcd 8741 (Mob. Serv. Div. 1989). Thus, we find the proposal to be in the public interest.

8. In view of the foregoing, we find Metro to be legally, technically, and otherwise qualified to construct and operate the proposed facilities. We further find that a grant of Metro's application will serve the public interest, convenience, and necessity. Therefore, Mobilphone's petition will be denied.

V. ORDERING PARAGRAPHS

9. Accordingly, IT IS ORDERED that the application of Metro Mobile Corporation, File No. 22749-CD-P/L-85, IS GRANTED.

10. IT IS FURTHER ORDERED that the Petition to Dismiss or Deny filed by Mobilphone & Beeper, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Mobile Services Division
Common Carrier Bureau

FOOTNOTES

[1] *See* Public Notice, PMS Lottery-35, Mimeo No. 2695 (released Apr. 13, 1990). Mobilphone also filed an application which was electrically mutually exclusive with Metro's captioned application. Metro had filed a petition against Mobilphone's application. Subsequently, Mobilphone filed a "Petition for Comparative Hearing" but its request was denied, and the parties' petitions to dismiss or deny were held in abeyance pending the outcome of the lottery. *See* Metro Mobile Corporation, 5 FCC Rcd 1040 (Mob. Serv. Div. 1990). Thus, because Metro won the lottery, we need to address only Mobilphone's petition against Metro's application. *See* Section 1.823(b) of the Commission's Rules.

[2] Report No. R-6406, "Technical Factors Affecting the Assignment of Facilities in the Domestic Public Land Mobile Radio Service", Carey, Roger B., issued June 24, 1964.

[3] In cases where the radiation pattern of an antenna or array of antennas is in dispute, the Commission has deferred to the manufacturer's expertise in determining the antenna radiation pattern to be expected. *See, e.g.*, Beep Beep Suncoast, 3 FCC Rcd 1646 (Mob. Serv. Div. 1988).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 79-105

In the Matter of

Detariffing the Installation and Maintenance of Inside Wiring 37958

SECOND FURTHER NOTICE OF PROPOSED RULE MAKING

Adopted: May 29, 1990; Released: May 31, 1990

By the Commission:

I. INTRODUCTION

1. In *NARUC v. FCC*,[1] the United States Court of Appeals for the District of Columbia Circuit held that the Commission may preempt state regulation of simple inside wiring services only to the extent such regulation would impede achievement of a valid federal policy. The Court remanded the Commission's orders preempting state regulation of those services for further proceedings in which we might examine whether state regulation would impede our efforts to achieve our goals. This Order initiates those proceedings. We tentatively conclude that we should preempt state regulation that requires or allows telephone companies to bundle charges for simple inside wiring services with charges for tariffed services. We also tentatively conclude that we need not preempt state regulation that requires telephone companies to act as providers of last resort for inside wiring services.

2. We remain committed to the development of an increasingly competitive market for the installation and maintenance of simple inside wiring, and we tentatively conclude that unbundling constitutes a major step toward that goal. We also continue to adhere to the policy that a deregulated environment will promote competition in that market, and will benefit consumers by reducing the total amount they pay to obtain communications services and by increasing their communications options. However, in the interests of comity, we determine that we should monitor any state actions in relation to the prices and terms and conditions of service under which telephone companies provide inside wiring services, rather than propose to preempt such action at this time. To simplify the monitoring process, we propose to require the larger local exchange carriers (LECs) to file, on an on-going basis, information on any state regulation of simple inside wiring prices.

3. Finally, we propose to require telephone companies to classify their inside wiring services as nonregulated activities for federal accounting purposes on a permanent basis.[2]

II. BACKGROUND

4. The Court in *NARUC v. FCC* remanded three Commission orders addressing preemption questions relating to inside wiring. The first of these orders, the *Second Report and Order* in Docket No. 79-105, [3] precluded the states from imposing common carrier tariff regulation on the installation and maintenance of inside wiring after December 31, 1986. The ensuing *Reconsideration* and *Further Reconsideration Orders* affirmed and reaffirmed that preemptive action.

5. When the Commission precluded the states from imposing common carrier tariff regulation on inside wiring services, it was attempting to complete a deregulatory process that had begun during 1977. Traditionally, the Commission and the states had treated inside wiring costs as capital investments to be recovered from the general body of ratepayers over a period of years. Rates for basic telephone services were calculated by "bundling" the depreciation charges and return component associated with these investments together with other costs. Consumers who did not obtain inside wiring services from a telephone company were, like other consumers, required to pay these "bundled" rates for basic telephone services.

6. The above system was, in the Commission's view, imperfect. Initially, the Commission focused on the inconsistency between capitalization and the objective of having the cost-causative customer bear the full costs of connecting station equipment to the telephone network. To further this objective, the Commission required carriers to expense the current costs of their inside wiring operations and to amortize their previously capitalized costs over a period of no more than ten years.[4] The Commission also preempted the states from using different procedures for intrastate ratemaking purposes.[5]

7. The change from capitalizing to expensing reallocated inside wiring costs from future to present ratepayers and thus, in the Commission's opinion, constituted a step toward cost causality. Expensing, however, was insufficient to ensure that each present customer would bear the inside wiring costs that customer causes. The Commission believed that detariffing would ultimately prove necessary to reach this goal. In a *Further Notice of Inquiry* released during 1981, the Commission requested public comment on a deregulatory program under which inside wiring "would not be provided pursuant to tariff, either on a 'bundled' or on an 'unbundled' basis."[6] The Commission suggested that unbundled, tariffed charges for inside wiring would be inadequate to ensure that each telephone company customer bears the inside wiring costs that customer causes, in part because state commissions would have regulatory authority over intrastate tariffs.[7] Although it appeared that detariffing would promote competition for inside wiring services, the Commission requested comment on the nature of the market for those services as well as on the impact of detariffing on telephone company costs.[8]

8. The responses to the *Further Notice of Inquiry* distinguished between simple and complex inside wiring, and indicated that the market for installing complex wiring was highly competitive. Accordingly, in 1983 the Commission detariffed the installation of complex wiring in the same manner and on the same basis as it had detariffed customer premises equipment (CPE).[9] In 1985 the Commission proposed to detariff the installation of simple inside wiring and the maintenance of all inside wiring.[10] The Commission tentatively concluded that

detariffing would be necessary to ensure that the cost-causative customer bears inside wiring costs. The Commission suggested, in addition, that detariffing would increase competition for inside wiring services, promote entry into the market for those services, and generate cost savings that would benefit ratepayers.[11]

9. In the *Second Report and Order*, the Commission detariffed the installation of simple inside wiring and the maintenance of all inside wiring, effective January 1, 1987. The Commission determined that the concerns certain commenters had raised regarding the availability of alternative suppliers of inside wiring services in some geographic areas did not require that telephone companies continue to provide those services under tariff.[12] The Commission stated that the "considerations that led us to preclude state as well as federal regulation of CPE require[d] that we give preemptive effect to our decisions to deregulate the installation and maintenance of inside wiring."[13]

10. Shortly after the release of the *Second Report and Order*, the Supreme Court held, in *Louisiana PSC*, that the Commission cannot properly require the states to use FCC-prescribed depreciation rates for intrastate ratemaking purposes.[14] The Supreme Court based its holding on Section 2(b)(1) of the Communications Act of 1934, as amended, which provides in pertinent part:

> [N]othing in this chapter shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in" connection with intrastate communication service by" wire or radio of any carrier . . . .[15]"

The Supreme Court stated that the Communications Act establishes dual state and federal regulation of telecommunications service, and that it is certainly possible for the states to follow depreciation rates and methods that differ from the federal rates and methods. The Supreme Court determined, however, that the case before it was "readily distinguishable from those in which FCC preemption of state regulation was upheld where it was *not* possible to separate the interstate and intrastate components of the asserted FCC regulation."[16]

11. In the *Reconsideration Order*, the Commission affirmed the preemption of state regulation of inside wiring services after reevaluating that action in light of *Louisiana PSC*.[17] The Commission determined that its preemptive action was consistent with Section 2(b)(1), because preemption was essential to ensuring that the interstate telecommunications system functioned as efficiently as possible. The Commission stated that preemption would eliminate the misallocation of costs that, it believed, inevitably occurs when services are tariffed, would allow competition to develop in the inside wiring installation and maintenance markets, and would give consumers the full benefits of that competition. The Commission also stated that any state regulation of inside wiring services that is jointly used for interstate and intrastate communication would be incompatible with the goal of promoting competition, since consumers cannot practicably or economically obtain separate inside wiring systems for interstate and intrastate uses.[18]

12. The Commission reaffirmed its preemptive action in the *Further Reconsideration Order*, while making clear that it had not precluded the states from imputing costs and revenues from detariffed inside wiring services in proceedings to set rates for properly tariffed, intrastate services.[19] The Commission stated that any state regulation of the prices charged for inside wiring services or of the terms and conditions under which those services are provided would conflict with, and negate, its policy that inside wiring services should be provided on a freely competitive basis. The Commission also stated that unbundling charges for inside wiring services from the charges for transmission services would be insufficient to achieve its goals with regard to inside wiring. The Commission believed that unbundling without detariffing would leave regulators free to set prices for inside wiring services that differed from the prices that would prevail in a competitive market, and thus would not ensure that inside wiring is installed and maintained as efficiently as possible.[20]

13. In *NARUC v. FCC*, the Court agreed that the Commission may properly attempt to encourage competition in the provision of inside wiring services and that Section 2(b)(1) does not preclude federal preemption of state regulation that would impede achievement of that goal. The Court held, however, that the Commission had failed to show that it was necessary to preempt all state regulation of simple inside wiring services to achieve its objectives and remanded the case for further proceedings. The Court required us to show with some specificity that state regulation would negate federal policy if we desire to preempt.[21]

III. DISCUSSION

A. Overview

14. Under *NARUC v. FCC*, we may preempt state regulation of simple inside wiring services to the extent necessary to achieve valid federal policies.[22] We believe that we can comply with this standard best by describing those policies, and by considering the ways in which states may wish to regulate inside wiring services and the effects of each particular form of state regulation on our ability to achieve our policies. Our conclusions and proposals on preemption are set forth below. We invite interested persons to comment on those proposals.

B. Policy Considerations

15. As indicated in the *Reconsideration* and *Further Reconsideration Orders*, the Commission preempted state regulation of inside wiring services in furtherance of its statutory mandate to "'make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide and world-wide wire and radio communication service at reasonable charges . . . .'"[23] We continue to believe that we may discharge this mandate only by attempting to ensure that the interstate telecommunications system functions as efficiently as possible.

16. The Commission's prior orders regarding inside wiring described the policies that the Commission believed would promote efficiency in the provision of interstate telecommunications. Initially, the Commission focused on having each telephone company customer bear the inside wiring costs he or she causes.[24] Subsequently, the Commission stated that competition, unhindered by state regulation, would promote efficiency

in interstate telecommunications.[25] The Commission anticipated that an absence of regulation would foster entry into the market for inside wiring services and, after a transitional period, would result in vigorous competition for those services. The Commission believed that the increased competition would benefit consumers by reducing the total amount they pay to connect station equipment to the telephone network and by increasing their inside wiring options.[26] We believe that these policies are still valid and that our proposals herein should further the goals the Commission previously identified. We invite comment on this conclusion. We are particularly interested in comments addressing whether implementation of our proposals would increase net consumer welfare.

C. Forms of State Regulation

17. We believe there are four forms of state regulation of simple inside wiring services that potentially might interfere with our efforts to achieve valid federal policies: regulation requiring or allowing bundling, price regulation, terms and conditions of service regulation, and provider of last resort regulation. We set forth below our conclusions and proposals regarding preemption in each area.

1. Unbundling

18. In *NARUC v. FCC*, the Court stated that we may require the states to unbundle charges for inside wiring services from charges for basic transmission services, because bundled charges could interfere with our goal of promoting competition for inside wiring services.[27] Since bundling forces telephone subscribers to pay telephone companies for inside wiring services even when the subscribers wish to obtain those services from other firms, it eliminates virtually all potential for competition for inside wiring services. Therefore, we tentatively conclude that we should continue to require that all charges for those services be optional and unbundled from charges for other telephone services. We request comment on this proposal.

2. Price Regulation

19. The Court in *NARUC v. FCC* suggested that we "may properly proscribe state tariffs that would result in the subsidization of the installation and maintenance of inside wiring by the general ratepayers."[28] According to the Court, preemption of such tariffs would be permissible because ratepayer subsidies would allow telephone companies to undercut alternative providers of inside wiring services.[29] We agree that state regulation that forces telephone companies to install or maintain simple inside wiring at less than cost may harm ratepayers. Such mandatory underpricing would increase the barriers to entering the market for simple inside wiring services and, we believe, thereby delay or prevent the full development of that market. State-mandated overpricing of inside wiring services also may harm consumers by increasing the total amount they pay to obtain functionally identical communications services. This increase would occur because mandatory overpricing would reduce the telephone companies' ability to compete in the market for simple inside wiring services and would allow other providers of inside wiring services to charge prices above those that would prevail in the absence of regulation. In addition, the mere existence of price regulation could diminish competition for simple inside wiring services, as requirements that telephone companies provide notice and obtain regulatory approval prior to changing inside wiring prices may keep the companies from responding flexibly to changes in market conditions.[30] Therefore, we continue to believe that state regulation of the prices telephone companies charge for simple inside wiring services may prevent the interstate telecommunications system from functioning as efficiently as possible.

20. We recognize, however, that our conclusions regarding the effects of state price regulation rest in part on predictions as to how consumers, telephone companies, and other participants in the market for simple inside wiring services will respond to price deregulation. It also appears likely that unbundling will advance this Commission's goals some distance. Rather than proposing to preempt any state pricing regulation at this time, we believe it best to observe how the market for simple inside wiring services evolves subject only to an unbundling requirement. Accordingly, we are not proposing in this Notice to preempt state regulation of the prices telephone companies charge for simple inside wiring services.

21. We take this action in the interests of comity with the states,[31] and we believe that the states will show a similar accommodation in responding to our decision. We intend to monitor the states' actions, if any, in relation to the pricing of simple inside wiring services to ensure that those actions do not impede the achievement of our policies. If, based on information gained from monitoring and other sources, we conclude that state actions are impeding federal policies and injuring consumers, we may revisit the issue of state pricing regulation.

22. We believe that we could simplify this monitoring process by obtaining, on an on-going basis, current information on any such state pricing regulation from the larger local exchange carriers (LECs). Therefore, we propose to require certain LECs to file, within thirty days of the documents' release, copies of any state statute, rule, order, or other document that regulates, or proposes to regulate, the prices telephone companies charge for simple inside wiring services.[32] We request comment on this proposal as well as on other alternatives for monitoring the states' actions in relation to prices for simple inside wiring services.

3. Regulation of Terms and Conditions of Service

23. In addition to prices, telephone company tariffs typically include requirements relating to the terms and conditions under which the tariffed services will be provided. These terms and conditions define the relationship between the telephone company and its customers. The terms and conditions may specify, for example, the qualifications of the telephone company personnel who will perform the service, the materials and supplies to be used in performing the service, and the manner in which the service is to be provided, among other matters.

24. In its prior orders, the Commission preempted all state regulation of terms and conditions of service for simple inside wiring.[33] We now believe, consistent with our decision regarding price regulation, that we need not address in this Notice whether such regulation would impede the achievement of our policies. Therefore, we are not proposing at this time to preempt the states from regulating the terms and conditions under which telephone companies provide simple inside wiring services.[34] While we also intend to monitor the states' actions regarding these terms and conditions of service, we are propos-

ing no filing requirement in this area. We believe the costs of any such requirement would outweigh the potential benefits.

4. Provider of Last Resort Regulation

25. Traditionally, many states have required local exchange carriers (LECs) to function as providers of last resort for inside wiring services. Although we did not intend to preempt this form of state regulation, the Court in *NARUC v. FCC* found our orders unclear on this issue.[35]

26. By definition, a LEC becomes a customer's provider of last resort only if the customer is unable to obtain adequate inside wiring services from other sources. We believe that state regulation that is carefully drawn to address such a marketplace failure would clearly not impede achievement of our goal of promoting competition for inside wiring services. We also believe that state provider of last resort regulation would threaten no other federal policies. Therefore, we tentatively conclude that we should not preempt state provider of last resort regulation. We request comment on this tentative conclusion.

IV. CLASSIFICATIONOF INSIDE WIRING SERVICES FOR FEDERAL ACCOUNTING PURPOSES

27. In the *Joint Cost Order*, the Commission adopted a system of accounting separation designed to ensure that interstate ratepayers do not bear the costs and risks of the telephone companies' nonregulated ventures. Generally, this system requires that telephone companies allocate their costs and revenues between regulated and nonregulated activities, and exclude the nonregulated costs and revenues from the jurisdictional separations process. However, while our rules classify all preemptively deregulated activities as nonregulated for accounting purposes, they also specify that activities deregulated at the interstate level, but not preemptively deregulated, are to be classified as regulated for accounting purposes until such time as this Commission decides otherwise.[36] Since we are not preemptively deregulating the installation and maintenance of simple inside wiring at this time, we must determine whether those activities should be classified as regulated for federal accounting purposes, or whether we should exercise our discretion under this rule to classify them as nonregulated for such purposes.

28. We tentatively conclude that we should continue to classify simple inside wiring services as nonregulated for federal accounting purposes.[37] The choice of a permanent accounting classification constitutes an important step in the process of ensuring that telephone companies bear the costs of their nonregulated ventures. We believe that we should choose the classification that advances that process in the most cost effective manner, provided the classification does not infringe on the states' authority over intrastate accounting and ratemaking matters. We also believe that a nonregulated classification will further these goals far better than any alternative procedure. We invite comment on our tentative conclusion.

29. In our proceeding on the interim accounting procedure for inside wiring, we received extensive comment regarding the costs of replacing our current procedures with a system under which inside wiring services would be classified as regulated activities for federal accounting purposes.[38] Based on those comments and our experience in administering our current system, we tentatively conclude that the current system is superior to any possible alternative system under which inside wiring services would be classified as regulated activities for federal accounting purposes or the costs and revenues from inside wiring services would be subject to the jurisdictional separations process.[39] We also believe that conversion to an alternative system would impose unnecessary burdens on this Commission and the industry. Any such conversion would have to be accompanied by changes in our cost allocation and access charge rules, and in the internal accounting systems carriers use to implement those rules. These changes, in turn, would affect a variety of Commission and carrier systems, including our automated reporting management information system (ARMIS), and would require new software, new studies, new reporting forms, new procedures, and additional employee training. We invite comment on these matters.[40]

V. PAPERWORK REDUCTION ACT

30. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980[41] and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified information collection requirement will be subject to approval by the Office of Management and Budget as prescribed in the Act.

VI. REGULATORY FLEXIBILITY ACT

31. We certify that the Regulatory Flexibility Act[42] is not applicable to the changes we are proposing in this proceeding. In accordance with the provisions of Section 605 of that Act, a copy of this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration at the time of publication of a summary of this second further notice in the Federal Register. As part of our analysis of the proposals described in this second further notice, however, we have considered the impact of the proposals on small telephone companies, *i.e.*, those serving 50,000 or fewer access lines.[43] The actions proposed herein, if eventually adopted in a final rule, are expected to have a minimal impact on small carriers.

VII. EX PARTE CONTACTS

32. For purposes of this non-restricted notice and comment Rule Making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period.[44] The Sunshine Agenda period is the period of time which commences with release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (a) releases the text of a decision or order in this matter; (b) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (c) issues a public notice stating that the matter has been returned to staff for further consideration, whichever occurs first.[45] During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by the Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding.[46]

33. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (a) if written, is not served on the parties to the proceeding, or (b) if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present.[47] Any person who makes or submits a written *ex parte* presentation shall provide on the same day it is made or submitted two copies of same to the Commission's Secretary for inclusion in the public record. The presentation (as well as any transmittal letter) must clearly indicate on its face the docket number of the particular proceeding(s) to which it relates and the fact that two copies of it have been submitted to the Secretary, and must be labeled or captioned as an *ex parte* presentation.

34. Any person who in making an oral *ex parte* presentation presents data or arguments not already reflected in that person's written comments, memoranda, or other previous filings in that proceeding shall provide on the day of the oral presentation an original and one copy of a written memorandum to the Secretary (with a copy to each Commissioner or staff member involved) which summarizes the data and arguments. The memorandum (as well as any transmittal letter) must clearly indicate on its face the docket number of the particular proceeding and the fact that an original and one copy of it have been submitted to the Secretary, and must be labeled or or captioned as an *ex parte* presentation.[48]

VIII. ORDERING CLAUSES

35. Accordingly, IT IS ORDERED, That pursuant to Sections 1, 4(i), 4(j), 201-205, 218-220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§151, 154(i), 154(j), 201-05, 218-20, and 403, and Section 553 of the Administrative Procedure Act, 5 U.S.C. §553, notice is hereby given of the proposed policies and rule discussed in this second further notice. We hereby give notice that in reaching our decisions in this proceeding we will not necessarily be limited to the comments and reply comments that may be filed, and that we may utilize other information, analyses, and reports, provided that in each such case a copy of the material relied upon will be associated with the record of this proceeding.

36. IT IS FURTHER ORDERED, That interested persons may file comments on the specific proposals discussed in this Second Further Notice of Proposed Rule Making on or before July 20, 1990. Reply comments shall be filed on or before August 17, 1990. In accordance with the provisions of Section 1.419 of the Commission's Rules, 47 C.F.R. §1.419, an original and five (5) copies of all comments shall be furnished to the Commission. Copies of the comments will be available for public inspection in the Commission's Docket Reference Room, 1919 M Street, N.W., Washington, D.C.

37. IT IS FURTHER ORDERED, That the Secretary shall serve a copy of this Second Further Notice of Proposed Rule Making on state regulatory commissions.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

Part 43 of Title 47 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 43 -- REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

1. The authority citation for Part 43 is proposed to be revised to read as follows:

AUTHORITY: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 211, 219, 220, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 211, 219, 220.

2. Section 43.41 is proposed to be added as follows:

§43.41 Reports on Inside Wiring Services.

Each local exchange carrier with annual operating revenues of $100 million or more shall file, within thirty (30) days of its release, a copy of any state or local statute, rule, order, or other document that regulates, or proposes to regulate, the price or prices the local exchange carrier charges for inside wiring services.

FOOTNOTES

[1] *National Association of Regulatory Utility Commissioners v. FCC*, 880 F.2d 422 (D.C. Cir. 1989)(*NARUC v. FCC*).

[2] No party challenged the Commission's preemption of state regulation of complex wiring services, and the decision to preempt such state regulation therefore became final. We do not intend to revisit that decision in these proceedings.

[3] Detariffing the Installation and Maintenance of Inside Wiring, 51 Fed. Reg. 8498 (Mar. 12, 1986)(*Second Report and Order*), *recon.*, 1 FCC Rcd 1190 (1986)(*Reconsideration Order*), *further recon.*, 3 FCC Rcd 1719 (1988)(*Further Reconsideration Order*), *remanded*, *NARUC v. FCC*, *supra*.

[4] Amendment of Part 31, Uniform System of Accounts for Class A and B Telephone Companies, 85 FCC 2d 818, 828-29 (1981)(*Expensing Order*), *recon.*, 89 FCC 2d 1094 (1982), *further recon.*, 92 FCC 864 (1983)(*Depreciation Preemption Order*), *rev'd in part*, *Louisiana Public Service Comm'n v. FCC*, 476 U.S. 355 (1986)(*Louisiana PSC*). The Commission permitted companies to phase-in the change from capitalizing to expensing over a four-year period. *Expensing Order*, 85 FCC 2d at 829.

[5] *Depreciation Preemption Order*, 92 FCC 2d at 879-80, *rev'd*, *Louisiana PSC*, *supra*.

[6] Deregulation of Customer Premises Inside Wiring, *Further Notice of Inquiry*, 86 FCC 2d 885, 886 (1981).

[7] *Id.* at 885-86.

[8] *Id.* at 886-88.

[9] Modifications to the Uniform System of Accounts for Class A and B Telephone Companies, *Report and Order*, CC Docket No. 82-681, 48 Fed. Reg. 50534, slip op. at 3 (1983).

[10] Detariffing the Installation and Maintenance of Inside Wiring, *Further Notice of Proposed Rule Making*, 50 Fed. Reg. 13991 (1985).

[11] *Id.*, slip op. at 1-2.

[12] *Second Report and Order*, slip op. at 15-16.

[13] *Id.*, slip op. at 20 (citation omitted).

[14] *Louisiana PSC*, 476 U.S. at 379.

[15] 47 U.S.C. §152(b)(1).

[16] 476 U.S. at 375-76 n.4 (emphasis in original), *citing* North Carolina Utilities Comm'n v. FCC, 552 F.2d 1036 (4th Cir.), *cert. denied*, 434 U.S. 874 (1977)(*NCUC II*) *and* North Carolina Utilities Comm'n v. FCC, 537 F.2d 787 (4th Cir.), *cert. denied*, 429 U.S. 1027 (1976)(*NCUC I*).

[17] *Reconsideration Order*, 1 FCC Rcd at 1192-93, paras. 13-18.

[18] *Id.* at 1192-93, paras. 17-18. The Commission also determined that Section 2(b)(1) did not apply to inside wiring services, because they are not common carrier communication services. *Id.* at 1192, paras. 13-16. The D.C. Circuit rejected this theory on the ground that Section 2(b)(1) applies to both common carrier and non-common carrier services. *NARUC v. FCC*, 880 F.2d at 428.

[19] *Further Reconsideration Order*, 3 FCC Rcd at 1720, para. 11; *accord* Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, *Report and Order*, 2 FCC Rcd 1298, 1310, paras. 88-91 (1987)(*Joint Cost Order*), *recon.*, 2 FCC Rcd 6283 (1987)(*Reconsideration Order*), *further recon.*, 3 FCC Rcd 6701 (1988)(*Further Reconsideration Order*), *aff'd sub nom.*Southwestern Bell Corp. v. FCC, 896 F.2d 1378 (D.C. Cir. 1987); Detariffing the Installation and Maintenance of Inside Wiring, 2 FCC Rcd 349 (1986)(*Stay Denial Order*).

[20] *Further Reconsideration Order*, 3 FCC Rcd at 1721, paras. 17-18.

[21] *NARUC v. FCC*, 880 F.2d at 430-31.

[22] *Id.* at 430.

[23] *Reconsideration Order*, 1 FCC Rcd at 1192, para. 17, *quoting* 47 U.S.C. §151; *see Further Reconsideration Order*, 3 FCC Rcd at 1721-22, paras. 17-19.

[24] *See Expensing Order*, 85 FCC 2d at 828.

[25] *E.g., Further Reconsideration Order*, 3 FCC Rcd at 1721, paras. 17-18.

[26] *See id.*

[27] *NARUC v. FCC*, 880 F.2d at 430.

[28] *Id.*

[29] *Id.*

[30] *See Further Reconsideration Order*, 3 FCC Rcd at 1721, paras. 17-18; *Reconsideration Order*, 1 FCC Rcd at 1192-93, paras. 17-18.

[31] *See generally* Diamond International Corp. v. FCC, 627 F.2d 489, 493 (D.C. Cir. 1980).

[32] A copy of the proposed rule is attached as an Appendix to this Order.

[33] *See Further Reconsideration Order*, 3 FCC Rcd at 1721, para. 17.

[34] The states may not, however, prescribe terms and conditions that are inconsistent with the technical standards set forth in Part 68 of the Commission's rules.

[35] *NARUC v. FCC*, 880 F.2d at 431.

[36] 47 C.F.R. §32.23(a).

[37] In a companion order, we affirm the Bureau's decision requiring all carriers subject to our Joint Cost rules to continue to classify their inside wiring activities as nonregulated activities for federal accounting purposes pending our decision in this proceeding. Classification of Inside Wiring Services for Accounting Purposes, FCC 90-208 (adopted May 29, 1990)(*Inside Wiring Classification Order*), aff'g Responsible Accounting Officers Letter 14, 4 FCC Rcd 7110 (Com. Car. Bureau 1989). Accordingly, carriers will continue to exclude inside wiring costs and revenues from the jurisdictional separations process and from interstate revenue requirement computations pending our decision on the long-term federal accounting policy for inside wiring. The states, however, will be free, under both our interim and our proposed long-term policies, "to employ different cost allocation methods . . . in intrastate ratemaking, and to mandate that carriers keep any side records required for the states' regulatory purposes." *Joint Cost Order*, 2 FCC Rcd at 1310, para. 90.

[38] *See Inside Wiring Classification Order*, *supra* at paras. 9-20.

[39] The current system is more efficient because carriers must make only one allocation, through the cost allocation manual procedures, to remove inside wiring costs from regulated costs. If inside wiring costs are subject to the separations process, however, carriers must perform one set of allocations to separate those costs between the intrastate and interstate jurisdictions, and then perform numerous, and probably differing, allocations to remove the inside wiring costs from the regulated costs in each jurisdiction that does not regulate those services. Such a complex process would appear to be far more burdensome and no more accurate than the current procedures.

[40] Since we are not proposing to require the states to use our procedures for intrastate purposes, *see* note 37, *supra*, our action will not infringe on the states' authority over intrastate accounting and ratemaking matters.

[41] 44 U.S.C. §3501-20.

[42] 5 U.S.C. §601 *et. seq.* (1987).

[43] Because of the nature of local exchange and access service, the Commission has concluded that small telephone companies are dominant in their fields of operation and therefore are not small entities as defined by the Regulatory Flexibility Act. *See* MTS and WATS Market Structure, 93 FCC 2d 241, 338-39 (1983). Thus, the Commission is not required by the terms of that Act to apply the formal procedures set forth therein. We are nevertheless committed to reducing the regulatory burdens on small telephone companies wherever possible consistent with our other public interest responsibilities. Accordingly, we have chosen to utilize, on an informal basis, appropriate Regulatory Flexibility Act procedures to analyze the effect of proposed regulations on small telephone companies.

[44] *See generally* 47 C.F.R. §1.1206(a).

[45] 47 C.F.R. §1.1202(f).

[46] 47 C.F.R. §1.1203.

[47] 47 C.F.R. §1.1202(b).

[48] 47 C.F.R. §1.1206.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-276

In re applications:

COMMUNITY COMMUNICATIONS, CORP. (hereafter Community)	File No. BPH-880727MB
SHIRK, INC. (hereafter Shirk)	File No. BPH-880727MJ
HAMPTON BROADCASTING LIMITED PARTNERSHIP (hereafter Hampton)	File No. BPH-880727ML
THE MOODY BIBLE INSTITUTE OF CHICAGO (hereafter Moody)	File No. BPED-880728MA
INDIANAPOLIS BROADCASTERS LIMITED PARTNERSHIP (hereafter IBLP)	File No. BPH-880728MB
MINORITY FEMALE BROADCASTERS, INC. (hereafter Minority)	File No. BPH-880728MQ
MEDIA-WISE OF INDIANAPOLIS, INC. (hereafter Media-Wise)	File No. BPH-880728MS
EILEEN S. LAPIN, DOUGLAS M. LAPIN AND STANLEY P. LAPIN d/b/a LAPINCO (hereafter Lapinco)	File No. BPH-880728MU
BLACKBURN BROADCASTING, INC. (hereafter Blackburn)	File No. BPH-880728MW
PATRICK D. McCONNELL (hereafter McConnell)	File No. BPH-880728MX
THOMAS M. EELLS (hereafter Eells)	File No. BPH-880728NB
BROAD RIPPLE COMMUNICATIONS (hereafter Broad Ripple)	File No. BPH-880728NC
PEPPI BROADCAST COMMUNICATIONS LIMITED PARTNERSHIP (hereafter Peppi)	File No. BPH-880728NF
BRIGHTNESS MINISTRIES, INC. (hereafter Brightness)	File No. BPED-880728NG
MIDWEST FM RADIO LIMITED PARTNERSHIP (hereafter Midwest)	File No. BPH-880728NH
INDY RADIO, INC. (hereafter Indy)	File No. BPH-880728NJ
A. J. RADIO LIMITED PARTNERSHIP (hereafter AJR)	File No. BPH-880728NK
WHITE RIVER COMMUNICATIONS, INC. (hereafter White River)	File No. BPH-880728NL
INDIANAPOLIS FM BROADCASTERS LIMITED PARTNERSHIP (hereafter Indianapolis FM)	File No. BPH-880728NO
WANDER BROADCASTING CORPORATION (hereafter Wander)	File No. BPH-880728NQ
SBM COMMUNICATIONS, INC. (hereafter SBM)	File No. BPH-880728NR

ROBERT M. WINTERS (hereafter Winters) File No. BPH-880728NN (Dismissed herein)

For a Construction Permit
For a New FM Station on Channel 242A
In Indianapolis, Indiana

HEARING DESIGNATION ORDER

Adopted: May 10, 1990; Released: June 6, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Preliminary Matters.* On October 24, 1988, Winters filed a Motion to Dismiss his application. Winters attested that he received no consideration for the filing of the motion. Accordingly, Winters' application will be dismissed herein.

3. *City-Grade Coverage.* All of the applicants in this proceeding request waivers of 47 C.F.R. § 73.315, the rule section requiring that a 3.16 mV/m contour from the proposed facility be provided to the entire principle community to be served. The applicants claim that it is impossible to select a transmitter location which would allow city-grade coverage for all of Indianapolis due to the inherent limitations of a 3.16 mV/m contour of a Class A station which allows coverage of only approximately 570 square meters. In this instance we find that the petitioners are correct, as the total area of Indianapolis covers 897 square miles. Accordingly, Section 73.315(a) of our rules will be waived for all the applicants in this proceeding.

4. *Environmental Impact: Radio Frequency Radiation.* Our engineering study indicates that the proposals submitted by Community, Hampton, Media-Wise, Lapinco, Blackburn, Broad Ripple, Brightness, Indy, AJR, Indianapolis FM, Wander, and SBM may significantly exceed the ANSI guidelines for human exposure to radio frequency (RF) radiation as outlined in OST Bulletin No. 65 (October 1985). Consequently, we are concerned that the above applicants may have failed to comply with the environmental criteria set forth in the *Report and Order* in GEN Docket No. 79-163, 51 Fed. Reg. 14999 (April 12, 1986). Under the rules, applicants must determine whether their proposals would have a significant environmental effect under the criteria set out in 47 C.F.R. § 1.1307. If the application is determined to be subject to environmental processing under the 47 C.F.R. § 1.1307 criteria, the applicant must then submit an Environmental Assessment (EA) containing the information delineated in 47 C.F.R. § 1.1311. 47 C.F.R. § 1.1307 states that an EA must be prepared if the proposed operation would cause exposure of workers or the general public to levels of RF radiation exceeding specific standards. Since all of the applicants named above have submitted proposals which may have a significant environmental impact as defined by 47 C.F.R. § 1.1307, they will be required to submit the environmental impact information described in 47 C.F.R. § 1.1311. This study must include the effects of nearby AM, FM, and TV broadcast antennas. In this regard, if the site is presently fenced in compliance with the guidelines, each applicant is required to so state and give the distance from the base of the tower to the fence. Accordingly, each applicant will be required to file, within 30 days of the release of this Order, an EA with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. *See Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom, Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

5. *Environmental Impact: Historical Places.* Section V-B, Item 20, FCC Form 301, asks whether grant of the application comes within Section 1.1307 of the Commission's Rules such that it may have a significant environmental impact. Minority answered in the affirmative because the proposed site is in a location identified in the *National Register of Historic Places* ("*Register*"). Pursuant to Section 1.1307, facilities that may affect properties listed or eligible for listing in the *Register* require submission of an EA prepared in accordance with Section 1.1311. Accordingly, Minority will be required to submit an EA in conformance with Section 73.1311 with the presiding Administrative Law Judge within 30 days of the release of this Order.

6. *Section II, Item 4.* Section II, Item 4 of FCC Form 301 (October 1986) requires that an applicant specify its address (number, street, city, state) as well as the home address of each of its principals. Moody, Brightness and SBM have not completed Item 4 correctly. Moody's application gives a post office box number as the residence address for William F. Mitchell, Sr. and John MacArthur, Jr.; Brightness' for Carl Lord; and SBM's for William G. Brown, Clifton G. Moor and James E. Martin, Jr. Accordingly, Moody, Brightness and SBM must all submit an amendment which gives all the information required by Section II, Item 4 to the presiding Administrative Law Judge after this Order is released.

7. *Section IV: Equal Employment Opportunities.* The Commission requires that if there will be five or more fulltime station employees, the applicant must complete and file Section VI of Form 301, and supply a statement detailing hiring and promotion policies for women and each minority group whose representation in the available labor force is five percent or greater in the proposed service area. Although Community and White River each have filed such statements, each are deficient. Community has not listed any sources specifically aimed at recruiting blacks or women. White River has failed to name any recruitment sources for women. Accordingly, Community and White River will each be required to file an amended EEO program with the presiding Administrative Law Judge, or an appropriate issue will be specified by the Judge.

8. *Minority.* Ms. Darie D. Hamilton is a non-voting shareholder of Minority. Ms. Hamilton also is a general partner of 105.3, Ltd., an applicant for a new FM station to serve Solana, Florida (File No. BPH-860826MA). In the Solana proceeding, MM Docket No. 87-464, the following issues were added against Ms. Hamilton and were left unresolved:

> To determine whether 105.3, Ltd.'s principal, Darie D. Hamilton, withheld information and answered questions untruthfully during discovery in this proceeding, whether 105.3, Ltd. has avoided compli-

ance with the reporting requirements, and whether the evidence about these matters indicated that 105.3, Ltd. should be disqualified.

Despite Ms. Hamilton's status as a non-voting shareholder in Minority's application, these unresolved issues are relevant in the instant proceeding. In the instant case, these unresolved issues pertain directly towards Ms. Hamilton's, and thus, Minority's, basic qualifications to be a Commission licensee. Therefore, such issues will be specified and tried against Minority in this proceeding.

9. *Media-Wise*. Ms. Sherma Wise, the sole shareholder of Media-Wise is an associate producer at WFYI-TV, Indianapolis. Ms. Wise has indicated her intent to terminate her employment at WFYI-TV in the event of grant of the referenced application. Accordingly, in the event of grant of Media-Wise's application, Ms. Wise will be required to sever all connections with WFYI-TV prior to the commencement of program test authority.

10. *Brightness*. Brightness has filed an application proposing a facility to be operated on a non-commercial educational basis. Brightness filed its application on FCC Form 301, the form used by applicants for commercial facilities, and not FCC Form 340, the form used by applicants for non-commercial educational facilities. While all the relevant engineering data has been supplied, the application filed by Brightness is lacking some of the legal information required to process its application. Specifically, Section II, Item 1 and Section IV of FCC Form 340 requests information concerning the structure of the applicant and its proposed educational service. Additionally, Section III requests information about the applicant's financial qualifications and whether the application is contingent upon a grant from the National Telecommunications and Information Administration. Accordingly, Brightness will be required to file these sections as an amendment with the presiding Administrative Law Judge.

11. *Midwest*. In response to Section III, FCC Form 301, as to Midwest's financial qualifications, Midwest certified that it did not have sufficient funds available to complete construction and operate the requested facilities for three months without revenues. Midwest noted, however, that it would "take requisite steps to meet financial qualifications and [would] amend its application in due course." Subsequently, on September 6, 1989, Midwest filed an amendment purporting to certify as to finances. Midwest's application was put on *Public Notice* for acceptance for tender on November 16, 1988, and Midwest, therefore, had until December 19, 1988 to file amendments as a matter of right. After the close of the amendment as of right period, an applicant cannot file a curative amendment to correct a grantability defect. *See Report and Order* in MM Docket 84-750, 50 Fed. Reg. 19936 (1985). To accept amendments after the close of the amendment as of right period would be unfair to the other applicants in this proceeding, who fully complied with our acceptability requirements as of the amendment as of right date. *See Prime Media Broadcasting, Inc.*, 3 FCC Rcd 4293 (1988); *See also, Emmy Hahn Limited Partnership*, 4 FCC Rcd 8336 (1989); *Domega Broadcasting Corporation*, 4 FCC Rcd 1450 (1989). Accordingly, Midwest's amendment is untimely and will herein be returned. Furthermore, an appropriate issue will be added as to Midwest's financial qualifications.

12. *Other Matters*. Broad Ripple petitioned for leave to amend its application after the last day for filing amendments as of right. The subject amendment was accompanied by the good cause showing required by 47 C.F.R. § 73.3522(a)(2); consequently, the amendment is accepted for filing. However, an applicant may not improve its comparative advantage after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

13. The applicants below have petitioned for leave to amend their applications on the dates shown. The accompanying amendments were filed after the last date for filing amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	AMENDMENTS FILED
Shirk	February 8, 1990
Minority	August 23, 1989
Blackburn	December 16, 1989
McConnell	March 16, 1989
Eells	July 13, 1989; October 23, 1989
Indy	July 3, 1989
Indianapolis FM	April 17, 1989; March 12, 1990
Wander	December 28, 1988; December 15, 1989
SBM	February 1, 1989; April 4, 1989; December 11, 1989; January 22, 1990

14. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

15. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to Community, Hampton, Media-Wise, Lapinco, Blackburn, Broad Ripple, Brightness, Indy, AJR, Indianapolis FM, Wander, SBM and Minority in which it is concluded that the proposed facility is likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §§ 1.1301-1319.

2. To determine whether Minority shareholder Darie D. Hamilton withheld information and answered questions untruthfully during discovery as a principal in 105.3, Ltd. in the Solana, Florida proceeding (MM Docket 87-464).

3. To determine whether Ms. Hamilton and 105.3, Ltd. avoided compliance with the reporting requirements in the Solana proceeding (MM Docket 87-464).

4. To determine whether, in light of the evidence adduced pursuant to Issues 2 and 3, above, Minority possesses the basic qualifications to be a licensee of the facilities sought herein.

5. To determine with respect to Midwest, whether the applicant is financially qualified.

6. To determine which of the proposals would, on a comparative basis, best serve the public interest.

7. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

16. IT IS FURTHER ORDERED, That the application filed by Winters IS HEREBY DISMISSED.

17. IT IS FURTHER ORDERED, That the city-grade coverage rule, 47 C.F.R. § 73.315(a), IS HEREBY WAIVED for all the applicants in this proceeding.

18. IT IS FURTHER ORDERED, That in accordance with paragraph 4 hereinabove, Community, Hampton, Media-Wise, Lapinco, Blackburn, Broad Ripple, Brightness, Indy, AJR, Indianapolis FM, Wander and SBM shall all submit the environmental assessment required by 47 C.F.R. § 1.1311 to the presiding Administrative Law Judge within 30 days of the release of this Order, with a copy to the Chief, Audio Services Division.

19. IT IS FURTHER ORDERED, That in accordance with paragraph 5 hereinabove, Minority shall submit the environmental assessment required by 47 C.F.R. § 1.1311 to the presiding Administrative Law Judge within 30 days of the release of this Order, with a copy to the Chief, Audio Services Division.

20. IT IS FURTHER ORDERED, That Moody, Brightness and SBM shall submit amendments which contain the information required by Section II, Item 4 of FCC Form 301, to the presiding Administrative Law Judge within 30 days after the release of this Order.

21. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, Community and White River shall each submit Section VI information in accordance with the requirement of Section 73.2080(c) of the Commission's Rules to the presiding Administrative Law Judge.

22. IT IS FURTHER ORDERED, That, in the event of grant of Media-Wise's application, Ms. Sherma Wise will be ordered to terminate her employment with WFYI-TV, Indianapolis, prior to the commencement of program test authority.

23. IT IS FURTHER ORDERED, That Brightness submit Sections II, III and IV of FCC Form 340, pursuant to paragraph 10 herein, with the presiding Administrative Law Judge within 30 days of the release of this Order.

24. IT IS FURTHER ORDERED, That the untimely amendment filed on September 6, 1989 by Midwest IS HEREBY RETURNED.

25. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Shirk, Minority, Blackburn, McConnell, Eells, Broad Ripple, Indy, Indianapolis FM, Wander and SBM ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

26. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

27. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

28. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-274

In re Applications of

AUGUSTA RADIO FELLOWSHIP INSTITUTE, INC. (hereafter "Augusta")	File No. BPED-880602ML
BEATRIZ LAURA GARCIA SUAREZ DE MCCOMAS (hereafter "McComas")	File No. BPH-880602NF
PETER GREAR & ANTHONY R. GREAR d/b/a GREAR BROADCASTING (hereafter "Grear")	File No. BPH-880602NK
CATHERINE E. PUGH (hereafter "Pugh")	File No. BPH-880602NR
EASTERN COMMUNICATIONS LIMITED PARTNERSHIP (hereafter "Eastern")	File No. BPH-880602NT

For Construction Permit for a New FM Station, Channel 287A, Wilmington, North Carolina.

HEARING DESIGNATION ORDER

Adopted: May 7, 1990; Released: June 6, 1990

1. The Commission has before it the above-captioned mutually exclusive applications for a new non-commercial FM station.

2. *Unresolved Issues -- Augusta.* As part of the "program of random checks of the financial qualifications of applicants for construction permits" announced in the Commission's March 19, 1987, *Public Notice* (Mimeo No. 2418), the Bureau required that all applicants in the 1988 Murrells Inlet, South Carolina proceeding furnish documentary proof of their respective financial certifications. (MM Docket No. 88-296). Fellowship, an applicant in the Murrells Inlet proceeding, (BPED-870730MV) submitted deficient documentation as to its financial ability to construct and operate the facilities for the 11 construction permit applications pending at the time of the filing of the Murrells Inlet application. Accordingly, the following issues were added against Fellowship in the Hearing Designation Order:

> 3. To determine with respect to . . . Fellowship whether, in light of evidence adduced concerning the deficiencies set forth above in this Order, the applicant [is] financially qualified.
>
> 4. To determine (a) whether, in light of the evidence adduced pursuant to issue 3, above, Fellowship made misrepresentations to the Commission, was lacking in candor in its dealings with the Commission or attempted to deceive or mislead the Commission and (b) if issue (a) is resolved in the affirmative, the effect thereof on Fellowship's basic qualifications to be Commission licensee.

3. Pursuant to Fellowship's November 10, 1988 request, in a *Memorandum Opinion and Order* released February 1, 1989, the presiding Administrative Law Judge dismissed Fellowship's application with prejudice; the above issues were never tried. These unresolved issues call into question Fellowship's qualification to be a Commission licensee. Therefore, such issues will be specified and tried against Fellowship in this proceeding.

4. In the *Notice of Proposed Rule Making* in MM Docket 88-40, RM No. 6035 (1988), the Commission at the request of Marine Broadcasting, Inc. proposed adding Channel 261C2 for Channel 287A at Jacksonville, North Carolina. Each of the five applicants vying for the allocation in the instant hearing order is short-spaced to the Jacksonville allocation which has been added. Therefore, while the applicants will be allowed to proceed to comparative hearing, it shall be ordered that any construction permit awarded as result of this proceeding shall be made contingent on the disposition of MM Docket 88-40.

5. The Federal Aviation Administration has determined that the antenna site proposed by McComas would constitute a hazard to air navigation. Accordingly, an issue with respect thereto will be included and the FAA made a party to the proceeding.

6. *47 C.F.R. §1.65.* Pursuant to 47 C.F.R. § 1.65, applicants are required to timely amend their applications so as to keep them substantially complete and accurate. Whenever information furnished in a pending application is no longer substantially complete and accurate in all significant aspects, or whenever there has been a substantial change as to any other matter which may be of decisional significance in a Commission proceeding involving the pending application, the applicant is required to amend his application to furnish such information as may be appropriate within 30 days. Staff investigation reveals that Augusta failed to report that three applications for construction permits in which it has an attributable interest, have been designated for hearing. An application (File No. BPH-871008MS) for a new construction permit in Kingtree, South Carolina, was designated for hearing on November 8, 1988 (MM Docket No. 88-536); a second application (File No. BPH-871001MG) for a new construction permit for Ocilla, Georgia, was designated for hearing on February 7, 1990 (Docket No. 90-58); and finally, a third application (File No. BPH-880301MD) for a new FM station in St. Matthews, South Carolina was designated for hearing on March 8, 1990 (MM Docket 90-156). Accordingly, Augusta will be ordered to file an amendment with the Administrative Law Judge within 30 days of the release of this Order, updating the information regarding its other attributable media interests.

7. *McComas*. The Commission requires that if there will be five or more fulltime station employees, the applicant must compete and file Section VI of Form 301, and supply a statement detailing hiring and promotion policies for women and minorities which make up five percent of more of the standard metropolitan statistical area workforce. McComas has not listed any specific local recruitment sources for women. Accordingly, McComas will be required to file an amended EEO program with the presiding Administrative Law Judge, or an appropriate issue will be specified by the Judge.

8. *Environmental*. McComas, in exhibit 5 of its application, indicates that its proposal "does not involve a site location specified under 47 C.F.R. § 1.1307(a)(1-4) and (a)(6) of the FCC rules." However, the applicant proceeds to indicate that the site may be "characterized as wetlands" which is identified in § 1.1307(a)(5). While the applicant believes that building a tower at the proposed site will not have a significant environmental effect, McComas does offer to conduct an environmental assessment if "the FCC deems it necessary." However, the applicant did not provide additional information describing the composition of the environment in which the radio transmitter tower is proposed. Such information may have clarified the extent of potential impact to the site area. As a result, with the data on hand, we cannot make a determination as to whether or not construction would adversely affect the area's environment. Therefore, McComas will be required to file within thirty days of this Order an environmental assessment with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. *See Golden State Broadcasting*, 71 FCC 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

9. Data submitted by the applicants indicate there would be significant difference in the size of the areas which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

10. *Financial*. Section III of the Commission's 301 application requires the applicant to certify that he is financially capable to construct and operate the requested facilities for three months without revenue derived from station operation. Applicants Grear and Pugh have certified that they are not able to meet this criterion: Grear simply answered "No" to the certification, while Pugh answered "No" and added a statement that "[a]n appropriate amendment will be filed as soon as the necessary documentation to support the certification has been assembled." No such amendment was filed. Accordingly, an issue will be specified against Grear and Pugh below.

11. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

12. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to Augusta, whether, in light of the evidence adduced concerning the deficiencies set forth in the Hearing Designation Order in MM Docket 88-296, the applicant is financially qualified.

2. To determine (a) whether, in light of the evidence adduced pursuant to Issue 1 above, August Radio Fellowship Institute, Inc. made misrepresentations to the Commission or attempted to deceive or mislead the Commission, and (b) if issue (a) is resolved in the affirmative, the effect thereof on Augusta's basic qualifications to be a Commission licensee of the facilities sought herein.

3. To determine whether there is a reasonable possibility that the tower height and location proposed by McComas would constitute a hazard to air navigation.

4. If a final environmental impact statement is issued with respect to McComas, in which it is concluded that the proposed facilities are likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by Sections 1.1301-1.1319 of the Commission's Rules.

5. To determine with respect to Grear and Pugh, whether the applicants are financially qualified.

6. To determine which of the proposals would, on a comparative basis, best serve the public interest.

7. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

13. IT IS FURTHER ORDERED, That, pursuant to paragraph 6 above, that Augusta will submit an amendment detailing the status of its attributable media interests to the Administrative Law Judge within 30 days of the release of this Order.

14. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, McComas submit the environmental assessment required by 47 C.F.R. § 1.1311 to the presiding Administrative Law Judge within 30 days of the release of this Order.

15. IT IS FURTHER ORDERED, That, pursuant to paragraph 7, within 30 days of the release of this Order, McComas shall submit Section VI information in accordance with the requirement of Section 73.2080(c) of the Commission's Rules to the presiding Administrative Law Judge.

16. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

17. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

18. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

19. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-308

In re Applications of

REAL LIFE EDUCATIONAL FOUNDATION OF BATON ROUGE, INC. — File No. BPED-840322CA

JIMMY SWAGGART MINISTRIES — File No. BPED-840822IF

For Construction Permit for a New Noncommercial Educational Broadcast Station, Channel 203C2, in Baton Rouge, Louisiana

MEMORANDUM OPINION AND ORDER

Adopted: May 24, 1990; Released: June 7, 1990

By the Review Board: MARINO (Chairman), BLUMENTHAL and ESBENSEN.

1. The Board has before it the *Initial Decision*, 4 FCC Rcd 8433 (ALJ 1989) (*I. D.*), in the above-captioned case, the exceptions of Real Life Educational Foundation of Baton Rouge, Inc. (Real Life), and the reply of Jimmy Swaggart Ministries (JSM). Oral argument was heard on May 18, 1990. For the reasons that follow, we certify to the Commission the question of whether the criterion of diversification of media "voices" should be henceforth considered in noncommercial comparative cases.

BACKGROUND

2. Originally set for action by *Hearing Designation Order*, 3 FCC Rcd. 4359 (1988), the applicants were to be compared on what have come to be known as the "educational comparative" issues developed in *New York University*, 10 RR 2d 215 (1967), and *Pacifica Foundation*, 21 FCC 2d 216 (Rev. Bd. 1970), [1] rather than upon the well-known "standard comparative criteria" set forth in the *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393 (1965). In eschewing the 1965 *Policy Statement* criteria more than twenty years ago, the *New York University* Commission candidly conceded that it had theretofore "never squarely faced the question of whether these [educational frequency] reservations were intended strictly as educational tools or were planned to be hybrid facilities to serve that end . . . ." 10 RR 2d at 217. After contemplating the nature of "educational" broadcasting at that particular time, it determined that "educational" applicants should be compared primarily on "which of the proposed operations will be integrated into the overall educational operations and objectives of the respective applicants," [2] and it went even further to opine [3]:

> In adopting these [educational comparative] issues in a case of first impression, we further note that our standard criteria (local residence, integration, broadcast experience, diversification, etc.) are virtually meaningless in a case of this type.

3. Underscoring its view that "educational" stations were, at that time, utterly distinguishable from commercial broadcast stations, the *New York University* Commission determined that, even in applying the statutory mandate of Section 307(b) of the Communications Act, 47 U.S.C. § 307(b), it would not consider in comparative "educational" cases the availability of commercial broadcast stations in the community, a policy view it did not alter (by implication) until its fresh decision in *Valley Broadcasters, Inc.*, FCC 90-147, released April 27, 1990, paras. 22-26. Accordingly, the *Hearing Designation Order* in this case (issued nearly two years before *Valley Broadcasters)* applied the *New York University* template, and it limited the Section 307(b) analysis "to available noncommercial FM signals within the respective services areas." 3 FCC Rcd at 4360.

4. Although the ALJ here traced the *New York University* paradigm, Real Life's exceptions point to several other recent cases that take notice of significant changes in the essential character of "educational" broadcasting (now described variously as "public" or "noncommercial" broadcasting) in the past two decades, as well as the parallel regulatory changes enacted by the Commission with respect thereto, and it demands that: "Diversification of Media Interests is a Necessary Criterion in the Comparative Evaluation of Noncommercial Applicants." [4] In support of this exception, it cites *San Joaquin Television Improvement Corp.*, 96 FCC 2d 594, 596-598 (Rev. Bd. 1983), *on reconsideration*, 96 FCC 2d 617 (Rev. Bd. 1984), [5] for the proposition that, certainly by 1983, noncommercial stations were considered "prominent media voices in the community," in the wake of changes fostered by *Ascertainment of Community Problems by Noncommercial Educational Broadcast Applicants*, 58 FCC 2d 526 (1976) (noncommercial stations now subject to "programming and other regulatory responsibilities virtually indistinguishable from those obtaining to ordinary commercial stations"), and *Public Radio and TV Programming*, 87 FCC 2d 716 (1981). Real Life also cites *FCC v. League of Women Voters of California*, 468 U.S. 364 (1984), where the prohibition against editorializing previously set forth in 47 U.S.C. § 399 was interred as unconstitutional, and it urges that the rationale of *New York University* that noncommercial broadcast stations are not a media "voice" in the community has been eclipsed by later decisions.

5. The *I. D.* reflects that JSM operates WLUX-AM, a commercial station also located in Baton Rouge, *id.*, para. 39, and that altogether:

> JSM presently owns *six commercial radio stations* organized as the Son Life Group. JSM also produces a daily (30 minutes) TV program and a weekly (1 hour) TV program that are carried, respectively, on 145 stations and 245 stations nationwide.

Id., at para. 56 (emphasis added). However, the ALJ did not factor these JSM media interests into his comparative evaluation; and, relying steadfastly on *New York University*, JSM maintains that the ALJ was correct in ignoring these other media interests. It further posits: "Even if diversification were relevant in noncommercial cases, it should be defined only by reference to ownership of noncommercial stations." [6]

DISCUSSION

6. Subsequent to the issuance of the *I. D.* and the filing of the pleadings herein, the Commission issued its decision in *Valley Broadcasters*, in which, for the first time, it held that the premise that noncommercial broadcast stations were not a "voice" in the community had been progressively overtaken by related policy decisions. There, limning briefly the maturation of noncommercial broadcasting since 1973, it ultimately observed that:

> In 1984 . . . the Commission adopted an issue responsive programming rule for noncommercial educational stations that is essentially identical to that applicable to commercial radio stations. *Public Broadcasting*, 98 FCC 2d 746, 755 (1984). Accordingly, there is no question now that all noncommercial educational stations have an obligation to serve the significant programming needs of their communities.

FCC 90-147 at para. 26. [7] In that historic policy revision, *Valley Broadcasters* declared that "no legitimate public interest purpose" would be served by ignoring noncommercial stations under the ordinary analysis required under 47 U.S.C. § 307(b).

7. The Board appreciates that *Valley Broadcasters* did not directly overrule *New York University* on the question of whether media diversification should be considered in noncommercial comparative cases. At the same time, however, it is undeniable that the *ratio decidendi* of *New York University* was that "educational" stations, intended at that time purely "for the advancement of . . . educational work," 10 RR 2d at 217, were not a "voice" in the community, as that term is conventionally used by the Commission, and that therefore no diversification concerns levitated in that era. However, based upon *Valley Broadcasters* (and the policy changes cited therein which actually *require* noncommercial stations to be a "voice" in the community), it may be that collateral policy has mutated as well. Perforce, the case at bar heightens the policy concerns, since the other media interests of JSM (including its AM station in this same community) are all commercial outlets, [8] which have always been beheld a community "voice." [9]

8. The Commission has newly monished that "[w]e expect decision-making personnel to be aware of changing Commission policy and, where appropriate, to apply such changes in pending cases." *WWOR - TV Inc.*, FCC 90-167, released May 3, 1990, at para. 9. While *Valley Broadcasters*, if narrowly construed, relates solely to consideration of noncommercial signals under Section 307(b), [10] it may also be read to recognize noncommercial "voices" in a manner that impacts upon the *New York University* view of diversity, along with Section 307(b). [11] (*See, e.g.*, note 9, *supra*.) Because the Board is uncertain of the ramifications of *Valley Broadcasters* (and the significant policy change inherent therein) on the question of media diversification as raised in the exceptions, we certify to the Commission the following question:

> Should the co-ownership of other media "voices" (commercial or noncommercial) now be recognized as a comparative factor in contests for noncommercial frequencies.

9. ACCORDINGLY, IT IS ORDERED, That the question in the preceding paragraph [12] IS CERTIFIED to the Commission for its consideration pursuant to Section 0.363(a) of the Rules, 47 CFR §0.363(a).

FEDERAL COMMUNICATIONS COMMISSION

Norman B. Blumenthal
Review Board

FOOTNOTES

[1] These issues, set forth in the *Hearing Designation Order*, are:

> 1. To determine (a) whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest, and if so, the terms and conditions thereof; (b) the extent to which each of the proposed operations will be integrated into the overall cultural and educational objectives of the respective applicants; and (c) whether other factors in the record demonstrate that one applicant will provide a superior FM educational broadcast service.

[2] 10 RR 2d at 218.

[3] *Id.*, at 217.

[4] Real Life Exceptions at 26-28.

[5] *Remanded on other grounds*, 2 FCC 2d 7004 (1987).

[6] JSM Reply at 23.

[7] The Commission's recognition of the changes in, and regulations affecting, noncommercial broadcasting was prefigured, perhaps, in *Seattle Public Schools*, 4 FCC Rcd 625 (Rev. Bd. 1988), our most recent noncommercial comparative case. There the Board chronicled at length the sea change in noncommercial broadcasting, its regulatory environment, *see id.*, at 628-633, and it took notice of the Commission's 1981 view that:

> From the perspective of the Commission, public broadcasting is characterized largely by a negative distinction, *i.e.*, public stations are not operated by profit seeking organizations nor supported by on-the-air advertising. The positive dimensions of public broadcasting are determined by social, political, and economic forces outside the Commission.

Id., at 629 (quoting *Public TV and Radio Programming, supra*, 87 FCC 2d at 730). *Seattle* involved two noncommercial entities seeking the same FM broadcast frequency, one of which was the incumbent licensee. Although no "renewal expectancy" issue was formally designated in that case, we never reached the question of media diversification, since we *sua sponte* imputed a "re-

newal expectancy" issue there; and pursuant to the reasoning of *Central Florida Enterprises, Inc. v. FCC*, 683 F.2d 503 (D.C. Cir. 1982), *cert. denied*, 460 U.S. 1084 (1983), we found a "renewal expectancy" for the incumbent that would have overridden diversification in any event. There is no "renewal expectancy" factor in the case at bar.

[8] At oral argument, JSM counsel represented that three of its six commercial broadcast stations have since been sold. Counsel also noted, not without merit, that under *New York University* it did not consider media diversification to be a concern, and it therefore had no summons to timely propose diverstiture or to seek a "daytime preference" for the operation of its other Baton Rouge station.

[9] In our recent decision in *Advanced Broadcast Technologies, Inc.*, FCC 90R-19, released March 30, 1990, we did assess a diversification demerit against Penn State University, which already held one FM broadcast station in that same community (as well as a nearby TV station), and was seeking another. However, the frequency at issue there was not a "reserved" educational frequency, and the hearing designation order in that case specified that the applicants be compared on the "standard comparative issue" pursuant to the *1965 Policy Statement*, rather than on the *New York University* issues. *See* 3 FCC Rcd 589 (1988) (HDO). In other words, we there assessed a comparative demerit against the university for its ownership of noncommercial stations in a contest for a commercial frequency. Penn State argued there (and in its pending application for review) that no diversification demerit should have been assessed; but its opponent reads *Valley Broadcasters* for the following proposition:

> In *Valley Broadcasters, Inc.*, FCC 90-147, released April 27, 1990, the Commission rejected any notion that noncommercial stations should receive disparate treatment. In evaluating the growing similarities in regulation between non-commercial and commercial stations, the Commission held that non-commercial educational stations should be included in transmission service analysis. *Id.*, at ¶ 26. Thus, it is clear the the Commission's intention is to harmonize the treatment of non-commercial and commercial stations under its rules, including the diversification analysis. In addition, Penn State owns media interests in the principal community to be served and, therefore, must receive a substantial diversification demerit.

Opposition To Application For Review, filed by Advanced Broadcast Technologies, Inc., May 16, 1990, at 9. Almost needless to say, a juxtaposition of *Advanced Technologies* to the instant case ineluctably raises the question of whether it is appropriate to charge an applicant for its *noncommercial* station in a contest for a *commercial* frequency, but -- obversely -- not charge an applicant for a *noncommercial* frequency for its existing *commercial* (or *noncommercial)* stations.

[10] Pursuant to the *Hearing Designation Order* in this case, the ALJ received a joint engineering exhibit relating to comparative signal coverage, but the showings were "limited to available noncommercial FM signals," in consonance with *New York University*. *See I.D.*, paras. 6-7. He ultimately awarded JSM a "moderate comparative coverage preference," *id.*, at para. 74. In the face of *Valley Broadcasters*, the limitation to noncommercial signals would appear to be no longer appropriate.

[11] The Commission can, of course, modify its policies in the context of adjudicatory cases, *SEC v. Chenery Corp.*, 332 U.S. 194, 203 (1947); and, indeed, two immediate examples of this option are *New York University and Valley Broadcasters*.

[12] We note that sub-issue (c) of the "educational" comparative issue (*see* note 1, *supra)* already provides that agency adjudicators may consider "other factors" that portend a "superior FM educational broadcast service," but that sub-issue has never been construed to include diversification, in light of the *New York University* view that the factor was "virtually meaningless" in this comparative context.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

HUGHES	File Nos. 1-DSS-MP/ML-90
COMMUNICATIONS	2-DSS-MP/ML-90
GALAXY, INC.	3-DSS-ML-90

Application for Modification of
Construction Permits and Licenses
for the Galaxy 4-R and Galaxy A-R
Domestic Fixed-Satellites

ORDER AND AUTHORIZATION

Adopted: May 29, 1990; Released: June 6, 1990

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. Hughes Communications Galaxy, Inc. (HCG) has applied to modify its 4/6 GHz (C-band) Galaxy 4-R and 12/14 GHz (Ku-band) Galaxy A-R satellites to consolidate them into a single "hybrid" satellite. It has also applied for an extension of its C-band launch date until March 1993. American Telephone and Telegraph Company (AT&T) and American Satellite Company d/b/a Contel ASC (Contel ASC) filed comments on HCG's applications.[1] For the reasons discussed below, HCG's applications are granted.

2. HCG was authorized to construct, launch, and operate its Galaxy 4-R and Galaxy A-R satellites in November 1988.[2] Both satellites are assigned to 99^0 W.L. Galaxy 4-R is to operate in the C-band and was authorized as a replacement for HCG's Westar 4 satellite, which is currently operating at 99^0 W.L. and nearing its end-of-service life. Galaxy 4-R is required to be launched by May 1991. Galaxy A-R is to operate in the Ku-band and is required to be launched by July 1993.

3. HCG requests authority to combine these two single-band satellites into a single hybrid C-band/Ku-band satellite at 99^0 W.L. The satellite would be named Galaxy 4-H. [3] HCG states that the proposed technical specifications of Galaxy 4-H are virtually identical to those previously authorized for Galaxy 4-R and Galaxy A-R, with some minor changes to reflect design improvements and to respond to customer requirements.[4] Specifically, HCG proposes to change the arrangement of the Ku-band channels, to reduce the Ku-band transponder power from 60 watts to 50 watts, and to eliminate the half-CONUS (contiguous United States) variable power dividers on the Ku-band subsystem. It also proposes to equip four channels with ground-controlled "cross-strap" switches.[5] HCG asserts that the proposed modifications do not increase the potential for interference into adjacent satellites from the C-band payload and, in fact, decrease the interference potential from the Ku-band payload.

4. In addition to the technical modifications, HCG requests an extension of the required May 1991 launch date for the C-band payload to conform with its scheduled March 1993 launch date for the Ku-band payload. HCG states that it intends to assure continuous C-band coverage at 99^0 after Westar 4 is retired by temporarily locating another C-band satellite at 99^0 W.L.[6]

5. HCG submits that this modification will provide significant benefits to the public. It states that using a single hybrid satellite will result in substantial economies in spacecraft construction, launch and insurance costs. It also states that the proposed hybrid's design incorporates state-of-the-art technology and full-frequency reuse, with no sacrifice in the performance or capabilities of the C-band and Ku-band communications payloads.

6. Contel ASC and AT&T filed comments on HCG's request. Contel ASC, which owns nine transponders on Westar 4, states that HCG has failed to provide any details concerning interim capacity at 99^0 W.L. after Westar 4's retirement.[7] Contel ASC notes that Westar 4 is expected to reach its end-of-service life in mid-1991. It states that if HCG does not launch its proposed Galaxy 4-H satellite until March 1993, the orbital location may remain unused for almost two years, leaving Westar 4 customers without service. According to Contel ASC, this constitutes "warehousing" an orbital location, and thus, the application should be denied by the Commission.

7. Both Contel ASC and AT&T also are concerned about potential interference from Galaxy 4-H's operations into satellites they plan to operate at adjacent locations. AT&T states that HCG has not provided its expected equivalent isotropically radiated power (EIRP) and saturation flux density (SFD) figures for operation to Hawaii and Puerto Rico, and thus, AT&T is unable to determine whether there will be unacceptable interference into its Telstar 401 satellite that is authorized to operate at 97^0 W.L. Contel ASC states that if HCG's application is granted, HCG should be required to confirm its previous commitment to resolve Contel ASC's interference concerns in a mutually satisfactory manner. It notes that Satellite Transponder Leasing Corporation (STLC) has proposed, in a separate proceeding, to operate its SBS-6 satellite from 99^0 W.L. until HCG's Ku-band satellite is launched into that location. Contel ASC is concerned that this may require it to coordinate its operations on its ASC-2 satellite, which is assigned to 101^0 W.L., on two separate occasions -- once with SBS-6 and once with Galaxy 4-H.

II. DISCUSSION

8. Operating a state-of-the-art hybrid satellite at a particular orbital location may be more efficient than operating two single-band satellites at that location. Construction, launch and insurance costs for one, albeit larger, satellite will be lower than for two satellites. Moreover, advances over the past several years have made it possible to construct hybrid satellites that have technical capabilities equivalent to single-band satellites. Thus, hybrid satellites can provide cost savings to operators and customers with no decrease in technical performance. Consequently, in developing the *1988 Orbital Assignment Plan*, the Commission attempted, when possible, to assign operators to corresponding C-band and Ku-band orbital locations.[8] This was designed to provide operators the opportunity to construct and launch hybrid satellites in current or future generations. HCG, which was operating

its C-band Westar 4 satellite at 99^0 W.L., was assigned to both the C-band and Ku-band portion of that location for its Galaxy 4-R and Galaxy A-R satellites.[9]

9. HCG now proposes to consolidate its two-single band satellites into one hybrid satellite. The technical specifications of its proposed hybrid fully conform with the Commission's requirements and, in fact, remain essentially unchanged from those authorized for Galaxy 4-R and A-R. Thus, HCG's technical proposal is in the public interest.

10. As part of its plan to implement a hybrid satellite, HCG also seeks an extension of the required May 1991 launch date for the C-band payload at 99^0 W.L. to conform to the required July 1993 launch date for the Ku-band payload. Although extensions of the milestone schedule included in each space station license are generally granted only when delay in implementation is due to circumstances beyond the control of the licensee,[10] given the above, grant of HCG's request would further the public interest and would not be inconsistent with the rationale underlying the implementation milestone schedule.

11. Implementation milestones are designed to ensure that licensed entities are proceeding with construction and launch of their systems in a timely manner. Requiring licensees to adhere to implementation milestones that are based upon the schedules proposed in their applications prevents orbital locations from being held by licensees who have not decided whether to proceed with their plans, at the exclusion of others who would use the locations.[11] Although Contel ASC alleges that the requested launch extension for the C-band payload amounts to HCG's "warehousing" an orbital location, this is not the case. HCG represents that it is committed to implementing its proposed hybrid satellite at 99^0 W.L. by the deadline required for the Ku-band payload at that location, and has apparently begun construction of Galaxy 4-H pursuant to a Section 319(d) waiver.[12] Moreover, under HCG's proposal, its C-band customers at 99^0 W.L. will be provided with continuous service, while later receiving the benefits of a hybrid satellite.[13] Accordingly, HCG's request for an extension of the C-band launch date to conform with the required launch date for the Ku-band payload is granted. Further, HCG is granted a corresponding extension of the required construction completion date for the C-band payload. If it has not already done so, HCG is also required to begin construction of the hybrid satellite promptly upon release of this order.

12. Finally, neither AT&T nor Contel ASC has presented any potential interference concerns that require that extraordinary conditions regarding adjacent satellite interference be imposed on Galaxy 4-H's license. HCG has supplied the technical information requested by AT&T and no significant problems are evident. In addition, as requested, HCG has reaffirmed its commitment to Contel ASC to resolve its interference concerns.[14] Moreover, the proposed technical specifications on Galaxy 4-H are comparable to those of other authorized satellites, including Galaxy 4-R and A-R. These satellites have been and are continuing to be coordinated among the affected licensees without a special license requirement. Galaxy 4-H similarly should be successfully coordinated with adjacent satellites without the need for Commission involvement.

III. CONCLUSION

13. Accordingly, IT IS ORDERED that Application File Nos. 1/2-DSS-MP/ML-90 ARE GRANTED and Hughes Communications Galaxy, Inc. IS AUTHORIZED to consolidate its Galaxy A-R and Galaxy 4-R satellites into the hybrid Galaxy 4-H satellite as proposed in its application.

14. IT IS FURTHER ORDERED that Application File No. 3-DSS-ML-90 IS GRANTED, that the construction completion and launch dates for the C-band payload at 99^0 W.L. are extended to conform with those authorized for the Ku-band payload at 99^0 W.L. in *Hughes Communications Galaxy, Inc.*, 3 FCC Rcd 6989 (1988), and that construction of Galaxy 4-H shall begin promptly upon release of this authorization. Unless extended by the Commission for good cause shown, this authorization shall become null and void in the event the space station is not constructed, launched, and successfully placed into operation in accordance with the technical parameters and terms and conditions of this authorization by the following dates, as certified in writing to the Commission by the licensee:

	Construction Commenced	Construction Completed	Launched
Galaxy 4-H	June 1990	April 1993	July 1993

15. IT IS FURTHER ORDERED that the Orbital Assignment Plan set forth in the Appendix to *Assignment of Space Stations in the Domestic Fixed-Satellite Service*, 3 FCC Rcd 6972 (1988), *modified*, 5 FCC Rcd 179 (1990), *further modified* in *American Satellite Company*, DA 90-280 (released March 2, 1990), and in *GTE Spacenet Corporation*, DA 90-278 (released March 2, 1990), IS FURTHER MODIFIED to assign Galaxy 4-H to 99^0 W.L.

16. Hughes Communications Galaxy, Inc. is afforded thirty days from the date of release of this order and authorization to decline this authorization as conditioned. Failure to respond within that time period will constitute formal acceptance of this authorization as conditioned.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] National Public Radio, Inc., a customer of HCG's, filed informal comments supporting HCG's application.

[2] Hughes Communications Galaxy, Inc., 3 FCC Rcd 6989 (1988). These satellites were originally named Westar 4-R/Galaxy 4 and Galaxy A.

[3] This proposed satellite was initially named Galaxy 4.

[4] After the license for Galaxy 4-R was issued, HCG was granted authority to increase the satellite's transponder power to 16 watts. Hughes Communications Galaxy, Inc., DA 90-378 (released March 14, 1990).

[5] Cross-strap switches allow specific C-band uplink channels to be retransmitted through specific Ku-band downlink channels and, conversely, allow specific Ku-band uplink channels to be retransmitted through C-band downlink channels.

[6] HCG subsequently filed an application requesting temporary authority to operate its C-band Galaxy 6 satellite, which is assigned to 91^0 W.L., at 99^0 W.L. for the period between Westar 4's retirement and Galaxy 4-H's launch. *See* Application File No. 13-DSS-ML-90 (filed January 5, 1990).

[7] After Contel ASC's comments were filed, HCG filed its application to operate Galaxy 6 at 99^0 W.L. on an interim basis. *See id.*

[8] *See* Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service, 3 FCC Rcd 6972 (1988)(*1988 Assignment Order*).

[9] *1988 Assignment Order*, 3 FCC Rcd at 6975.

[10] *See, e.g.*, MCI Communications Corporation, 2 FCC Rcd 233, 233 (1987), at para. 5.

[11] *Id.*

[12] HCG requested, and was granted, a waiver pursuant to Section 319 (d) of the Communications Act, 47 U.S.C. § 319(d), to begin construction of Galaxy 4-H at its own risk. *See* Letter from Chief, Domestic Facilities Division to Counsel, HCG (January 8, 1990).

[13] Further, while Contel ASC is concerned about a lapse in service to its Westar 4 customers, it has represented in another proceeding that it intends to transition these customers to its ASC-2 satellite after Westar 4's retirement. *See* American Satellite Company, 5 FCC Rcd 1186 (1990).

[14] Contel ASC's concerns regarding coordination with SBS-6 and Galaxy A-R were addressed in the order granting STLC temporary authority to operate SBS-6 at 99^0 W.L. *See* Satellite Transponder Leasing Corp., DA 90-377 (released March 14, 1990), at para. 8. The substitution of Galaxy 4-H for Galaxy A-R at this location should not affect this coordination.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-80

In re Applications of

LORRAINE WALKER ARMS	File No. BPCT-881202KK
P Z ENTERTAINMENT PARTNERSHIP, L.P.	File No. BPCT-881205KG
MEDIA PROFILES, INC.	File No. BPCT-881205KI
TIERRA ALTA BROADCASTING, INC.	File No. BPCT-881205KJ
ECHONET CORPORATION	File No. BPCT-881205KM

For Construction Permit for
New Television Station,
Channel 15, Las Vegas, Nevada

MEMORANDUM OPINION AND ORDER

Adopted: May 18, 1990; Released: June 7, 1990

By the Review Board: MARINO (Chairman), BLUMENTHAL, and ESBENSEN.

1. PZ Entertainment Partnership (PZ) has filed an appeal pursuant to 47 CFR §1.301(a)(1), from the Administrative Law Judge's ruling dismissing its application. PZ's application was dismissed because PZ, after being ordered by the ALJ both orally and in writing well in advance of the hearing, failed to produce its principal owner for cross-examination at the hearing on March 13, 1990. We affirm the ALJ's ruling which is fully supported by *Carroll, Carroll & Rowland*, 4 FCC Rcd 7149 (Rev. Bd. 1989), *rev. denied*, FCC 90-105, released April 9, 1990.

2. *Background:* Ten applicants seeking to construct a new television station in Las Vegas, Nevada were designated for hearing April 13, 1989, by *Hearing Designation Order*, 4 FCC Rcd 3457 (1989) (HDO). By the first prehearing conference on June 13, 1989, five applications still remained in this case (Tr. 1-7); thereafter, by *Order*, FCC 89M-1687, released June 15, 1989, the presiding ALJ established specific dates for the exchange of final exhibits and for notification of witnesses to be cross-examined.

3. PZ, one of the five remaining applicants, claimed that: "All of the equity in the corporate general partner and all but one percent of the equity in the limited partnership is owned by Mr. Meshulam Riklis." Riklis, according to PZ, would not participate "in the day to day station operation," which "would be overseen by an officer of the general partnership, John Huddy." Appeal at 2. In its written exhibit, exchanged prior to hearing, PZ indicated that it was not seeking any credit for participation of ownership in the management of the proposed station, and that Huddy was qualified to provide testimony concerning the applicant's ownership structure. *Id.*

4. On November 8, 1989, one of the competing applicants, Tierra Alta Broadcasting, Inc., in accordance with the ALJ's prehearing schedule, timely requested Huddy, Meshulam Riklis, and Pia Zadora Riklis, Meshulam's wife, for cross-examination. Tierra Alta's request urged that:

> The only thing that is clear from the PZ written testimony is that Meshulam Riklis, directly or indirectly, owns 99% of PZ, presumably has at least some say in what happens to PZ, either directly or indirectly through various of the entities that appear to own PZ, and presumably as well, is the only person capable of setting forth fully and accurately the true ownership of this applicant. It is manifest that the person that truly owns 99% of this applicant, Meshulam Riklis, should appear at hearing.

Tierra Alta Opposition to Appeal, Ex. A, p. 2. At a further conference held November 17, 1989, to consider procedural matters prior to hearing, the ALJ ruled that:

> With respect to PZ, Mr. Riklis is going to have to appear. I understand there's no integration, but PZ is participating in this case for some reason, and I just don't have any difficulty at all in requiring the sole shareholder, the general partner, to come and give some testimony. But Pia Zadora Riklis need not show up . . . . (Tr. 17).

5. Later, PZ sought reconsideration of this ruling, and the ALJ again ordered that Meshulam Riklis should appear and give testimony at the hearing scheduled for March 13, 1990. *Order*, FCC 90M-425, released March 5, 1990. During the eight days before the hearing, PZ did not ask for leave to appeal or a stay. *See* 47 CFR §1.301(b), (c).

6. At the March 13 hearing, PZ counsel informed the ALJ that: "As your Honor has ordered the appearance of Mr. Riklis in this case, PZ Entertainment intends to put on its direct case through Mr. Huddy, and then petition for reconsideration of your order for the appearance of Mr. Riklis." Tr. 33-34. The ALJ replied (Tr. 34-25; emphasis added):

> [Counsel], that would be the third time, I believe, that I will have concerned myself with Mr. Riklis.
>
> When we came here the first time, I had received arguments from you pointing out to me that Mr. Riklis was a very busy man, amongst some other things. I believe, I said something about that on the transcript.
>
> I think, I said that PZ is participating in this case for some reason, and so I have no compunction about calling in people who comprise that applicant who I think ought to be here.

> Now, I have just gone through that again, when I issued an order on March the fifth. And now you are telling me you are going to ask me to reconsider that, to think about it, for the third time.
>
> If you have some new grounds, I'd be willing to do it, but if nothing has changed, I'm not going to reconsider.
>
> [Counsel]: I think, obviously, the new grounds will be based upon the testimony of Mr. Huddy, the completeness of his testimony considering our case.
>
> *I have to represent to Your Honor at this time that Mr. Riklis will not present himself as a witness in this proceeding, given the circumstances of our case.*
>
> [ALJ]: Alright. Then, there will be some consequences from that, I'm sure.

7. After the other applicants had presented their cases, the ALJ addressed PZ's counsel: "Well, that leaves PZ Entertainment Partnership. The two persons that I expected to hear from were Mr. Huddy and Mr. Riklis . . . and Mr. Riklis has declined to appear." (Tr. 181). Further (Tr. 181-183; 189; emphasis added):

> [Counsel]: That's correct, Your Honor . . . after Mr. Huddy's direct case testimony we would petition for reconsideration of your order noticing Mr. Riklis for cross-examination. *He will not present himself for cross - examination.*
>
> [ALJ]: Okay. The motion was made earlier today to dismiss PZ's application, because of the refusal of Mr. Riklis to appear . . . I'm not willing to take the position that it just may be that Mr. Huddy will be able to respond as fully as Mr. Riklis would have been, and, therefore, Mr. Riklis' non-appearance ought to be excused. I'm not prepared to excuse Mr. Riklis. As I understand, PZ's organizational structure, Mr. Riklis is the sole owner of the corporate general partner in that entity, isn't that right?
>
> [Counsel]: That's correct. He's the sole owner of the corporation, which is the general partner.
>
> [ALJ]: And Mr. Huddy is the director . . . of the corporation, the corporate general partner.
>
> [Counsel]: That's correct, Your Honor. He has all day-to-day managerial functions for the corporation.
>
> [ALJ]: Well, I just don't have any hesitation about requiring a general partner, and I take the view that that is Mr. Riklis, to come in here . . . .
>
> * * *
>
> [Counsel]: Your Honor, I take it, the inclination is to dismiss PZ Entertainment for the basis stated. If you would prefer simply to take an offer of proof at this time of the direct case exhibits, and terminate and dismiss us at this time, we're prepared – we would be prepared to go ahead.
>
> * * *
>
> [ALJ]: All right. [PZ's Exhibits] One, two, and three were received, and because Mr. Riklis, the sole owner of the corporate general partner of PZ Entertainment has declined to appear, after having been requested to do so, PZ's application is dismissed with prejudice. All that remains then is for me to close this record and set dates for the filing of proposed findings and reply findings. The record is now closed.

8. On appeal, PZ argues that the ALJ's order that Riklis appear for cross-examination "cannot be justified in law or in fact" because Riklis was not "a critical sponsoring witness" (Appeal at 4-5), and that "Riklis cannot in any sense be described as a critical witness; he does not propose integration and his attributable media holdings are a matter of record. Mr. Riklis' absence would not have resulted in the proffer of unsponsored testimony. The competing applicants' were assured of their right to a full hearing without his testimony." *Id.* at 5. Tierra Alta responds that: "as the principal [99%] owner of PZ applicant--the ownership of which is at best described as 'convoluted' and which was never adequately explained by PZ in its direct [written] testimony--Riklis should be expected to testify concerning his applicant, regardless of whether he hid behind one of his employees in failing to sponsor direct testimony." Opposition, at 2-3.

9. *Discussion:* In *Warren Price Communications, Inc.*, FCC 90-175, released May 10, 1990, the Commission reaffirmed its previous holding in *Hillebrand Broadcasting, Inc.*, 1 FCC Rcd 419 (1986), that "prosecution of an application means timely compliance with procedural and substantive rulings, including ALJ's orders," and that "the public interest is served by expeditiously resolving comparative application proceedings so that the public can receive service." A presiding officer's "discretion to control the conduct of the proceeding," the Commission has declared, "encompasses the discretion to dismiss the application of a party that burdens the proceeding by repeatedly failing to adhere to the governing procedures." *Warren Price, supra*, paras. 11-12. These principles were followed in *Carroll, Carroll & Rowland, supra*, 4 FCC Rcd at 7150-7152, where the Board affirmed the ALJ's denial of an applicant whose principals had refused to give deposition testimony after specifically being ordered to do so. In denying review in *Carroll*, the Commission stated: "We agree with the Board's resolution of this case and we therefore adopt its decision."

10. PZ argues that the ALJ was arbitrary and abused his discretion, because Riklis was not "a critical witness." But the record establishes that the ALJ granted a timely request that Riklis be present for cross-examination, since Riklis was a 99% owner and the sole general partner. Thus, Riklis was obliged to testify, inasmuch as the Communications Act, 47 U.S.C. 308, 310, and Commission precedent leave no room for doubt that a controlling owner, and not his employee, is responsible for his broadcast application and the proposed operation of a station. *See Eleven Ten Broadcasting Corp.*, 32 FCC 706 (1962), *recon. den.*, 33 FCC 92 (1962), *aff'd sub nom. Immaculate Conception of Los Angeles* v. *FCC*, 320 F.2d 795 (D.C. Cir. 1963); *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393 (1965). Since this legal obligation cannot be delegated, Riklis could not abdicate his responsibility to an employee when ordered to testify in this

proceeding. *Compare The Baltimore Radio Show, Inc.*, 4 FCC Rcd 6437, 6455 n. 2 (Rev. Bd. 1989), where we indicated that the ALJ did not err in ordering depositions of the owners of "a majority of the non-voting stock and the equity of an applicant."

11. Here, as in *Carroll, supra*, the ALJ's actions prior to hearing were calculated to narrow and expedite the issues to be tried at the March 13th hearing. Riklis' failure to appear for cross-examination would have disrupted the proceeding by delaying the closing of the record, and the filing of proposed findings, thereby prejudicing the right of the other parties and public to a speedy resolution of the case. Riklis had been given ample notice that he had to testify, first, at the November 17, 1989 conference. Subsequently, that ruling was reconsidered at PZ's request and reconfirmed in a written *Order*, released March 5, 1990, and that *Order* was "effective when the *Order* was released." *See* 47 CFR §1.301(c). During the next eight days, PZ did not seek leave to appeal or a stay of the *Order* as permitted by the Commission's rules. *See* 47 CFR §1.301(b) and (c). Not until the day of the hearing did it inform the presiding officer that Riklis would not "present himself for cross-examination." In essence, the ALJ was told that he would have to be satisfied with the testimony of an employee, who did not even own one share of stock, *paras.* 6-7 above. On its face, Riklis' refusal to appear and testify "in disregard of the ALJ's specific orders to do so is no more than out-and-out contempt." *See Carroll, supra*, 4 FCC Rcd at 7152 (separate statement of Board Member Esbensen). We therefore affirm the dismissal of PZ's application.

12. ACCORDINGLY, IT IS ORDERED, That the appeal of PZ Entertainment Partnership, L.P., filed March 20, 1990, IS DENIED, and that the Motion to Strike and the Motion for Summary Affirmance filed March 28, 1990 by Tierra Alta Broadcasting, Inc. ARE DISMISSED as Moot.

FEDERAL COMMUNICATIONS COMMISSION

Joseph A. Marino
Chairman, Review Board

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-281

In the Matter of

Amendment of Section 73.606(b), RM-7322
Table of Allotments,
TV Broadcast Stations.
(Jasper and Tuscaloosa, Alabama)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 14, 1990; Released: June 6, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration a petition for rule making filed by Channel 17 Associates, Ltd. ("Channel 17"), licensee of television station WDBB(TV), Channel 17, Tuscaloosa, Alabama, to amend the Television Table of Allotments by changing the community of license of Channel 17 from Tuscaloosa to Jasper, Alabama, and to modify Channel 17's license accordingly. Channel 17 seeks to change its community of license pursuant to Section 1.420(i) of the Commission's rules.[1] Channel 17 states that it will file an application to modify its license upon approval of its proposal.

2. Channel 17 notes that Jasper (population 11,894)[2] is the largest city in Walker County, Alabama, and submits information regarding the community's government, businesses, educational facilities, and civic activities. Jasper presently has no local television service, whereas two commercial and one noncommercial educational channels are allotted to Tuscaloosa. Channel 17 notes that the Commission has previously allotted television channels to communities with populations less than that of Jasper.

3. Channel 17 argues that various public interest benefits could result from approval of its petition. First, Channel 17 notes that the Arbitron Ratings Company treats Tuscaloosa and Birmingham, Alabama, as separate markets. Channel 17 claims that the Tuscaloosa Arbitron market cannot support two full-service television stations. If Station WDBB(TV) is licensed to Jasper, Channel 17 argues, the station would be in the Birmingham market. As a result, claims Channel 17, the remaining Tuscaloosa station would be the sole station in that market, which could lead to increased advertising revenues for the station, and Station WDBB(TV) could broaden its economic base as a member of the Birmingham Arbitron market.[3] Second, Channel 17 claims that it has reached an agreement with a Jasper low power television (LPTV) station to use that station's facilities to produce public service programming for Jasper. Channel 17 states that it will share certain costs for the Jasper studio facility with the LPTV licensee, which will help the LPTV station to remain on the air. Finally, Channel 17 states that it will not move its transmitter site from its present location if the proposed change is approved. Therefore, claims Channel 17, no aspect of Station WDBB(TV)'s reception service will be lost to Tuscaloosa.[4]

4. A staff engineering analysis confirms that UHF TV Channel 17 can be allotted to Jasper in compliance with the minimum distance separation requirements of Section 73.610 of the Commission's rules.[5] Furthermore, this proposal is not precluded by the Commission's *Order* in *Advanced Television Systems and Their Impact on the Existing Television Broadcast Service*, 52 FR 28346, published July 29, 1987.

5. We believe the public interest would be served by proposing an amendment to the Television Table of Allotments to change the community of license of UHF TV Channel 17, Tuscaloosa, Alabama, to Jasper, Alabama, as the change would provide Jasper with its first local television service. First local television service is preferable to second local television service under our television allotment priorities. *See Sixth Report and Order*, 41 FCC 148, 167 (1952).

6. Accordingly, we seek comment on the proposed amendment of the Television Table of Allotments, Section 73.606(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel Number	
Community	Present	Proposed
Tuscaloosa, Alabama	17, 33, *39-	33, *39-
Jasper, Alabama	--	17

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **July 30, 1990,** and reply comments on or before **August 14, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Howard M. Weiss, Esq.
Mark N. Lipp, Esq.
Mullin, Rhyne, Emmons and Topel, P.C.
1000 Connecticut Avenue--Suite 500
Washington, D.C. 20036
(Counsel for Channel 17 Associates, Ltd.)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11,549 (Feb. 9, 1981).

10. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the TV Table of Allotments, Section 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] Channel 17 previously filed a petition proposing to change the community of license of Station WDBB(TV) from Tuscaloosa to Bessemer, Alabama. The Chief, Allocations Branch, denied the petition, and Channel 17 filed an application for review of the decision. *See Report and Order (Bessemer and Tuscaloosa, Alabama)* (MM Docket No. 89-87), 5 FCC Rcd 669 (1990), *app. for rev. pending.* Channel 17 states that it will accept the modification of its license to either Bessemer or Jasper.

[2] This population figure is taken from the 1980 U.S. Census. Channel 17 submits a study estimating the 1989 population of Jasper to be 13,105.

[3] Channel 17 claims that Station WDBB(TV), which was listed in the Birmingham Arbitron report from May 1986 through February 1987, has lost approximately $200,000 per month since Arbitron designated the station as part of the Tuscaloosa market.

[4] Channel 17 also claims that there are other television channels available for allotment to Tuscaloosa. However, because Channel 17 did not request that we allot another channel to Tuscaloosa, we will not propose the allotment of a new channel to that community.

[5] The transmitter for Station WDBB(TV) is located at coordinates of 33-28-51 and 87-24-03.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

PUERTO RICO TELE-COM, INC. File No. I-T-C-90-055

Application for authority to operate as an international resale carrier

MEMORANDUM OPINION, ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: May 29, 1990; Released: June 6, 1990

By the Chief, International Facilities Division:

1. On February 1, 1990 Puerto Rico Tele-Com, Inc. (PR Tele-Com) filed the above-captioned application requesting authority pursuant to Section 214 of the Communications Act of 1934, as amended, to resell the switched voice services of existing common carriers to provide international switched voice service between the United States and various overseas points. The application was placed on public notice on February 14, 1990.

2. On March 16, 1990, La Telefonica Larga Distancia de Puerto Rico (TLD) filed Comments. PR Tele-Com filed an Opposition to Comments on March 29, 1990. On April 6, 1990, PR Tele-Com filed an Amendment to its original application and the signature page to its Opposition to Comments. TLD filed a Motion to Strike and a separate Reply on April 10, 1990. On April 25, 1990, PR Tele-Com filed an Opposition to TLD's Motion to Strike and TLD filed a reply on May 2, 1990.

3. PR Tele-Com is a newly organized company under the laws of the Commonwealth of Puerto Rico and is a wholly-owned subsidiary of Atlantic Tele-Network, Inc. which is organized under the laws of Delaware. Atlantic Tele-Network, Inc. is a holding company whose subsidiaries are engaged in the provision of various telecommunications services and related activities, including the provision of local exchange telephone service and customer premises equipment. Atlantic Tele-Network, Inc. is the ultimate parent of Virgin Islands Telephone Corporation (Vitelco), the local exchange carrier ("LEC") serving the U.S. Virgin Islands; Vitelcom, Inc., which provides customer premises equipment and information services; Vitelcom Cellular, Inc., which is seeking authorization to construct and operate the wireline cellular system in the Virgin Islands; and Atlantic Tele-Network Company (ATN), a non-dominant carrier which has been authorized to provide international switched voice services between the United States and various overseas points on a resale basis.[1]

4. In the instant application, PR Tele-Com requests authority to provide international switched voice services between the United States and international points by the resale of international switched voice services provided by American Telephone and Telegraph Company (AT&T), US Sprint, MCI International Telecommunications Corp. (MCI), TLD, St. Thomas & San Juan Telephone Company, Inc. (STSJ) and General Comserv Corporation (Comserv).[2] It adds that it will compete with other carriers that currently supply international switched voice services by reselling the services over existing facilities. PR Tele-Com states that based on its intimate knowledge of Puerto Rico, it has concluded that there is more than adequate demand for the proposed services to support additional competition. It states that a grant of its request will increase customer choice and introduce competitive pressure on international rates. PR Tele-Com has filed the material required by Section 63.01 of the Commission's Rules including a statement that it should be classified as non-dominant in the provision of off-islands service on a resale basis. It states it is not affiliated in any respect with any local exchange carrier operating in Puerto Rico and it is not foreign owned. PR Tele-Com estimates that its annual revenues from the service, based on its business judgment regarding projected customer demand, will be approximately $8 million, with annual costs of $5.6 million.

5. In its Comments filed March 16, 1990, TLD asks the Commission to deny PR Tele-Com's application or to require the creation of a cost allocation manual and auditing procedures for Vitelco which, like PR Tele-Com, is a subsidiary of Atlantic Tele-Network, Inc. TLD states PR Tele-Com must prove its non-dominant status by showing there is no cross-subsidization with Vitelco's operations. According to TLD, PR Tele-Com should also guarantee that separate bookkeeping operations will be maintained and clarify whether its service is for Puerto Rico or other areas. TLD asserts that the 30% profit PR Tele-Com predicts it will earn is unreasonable and unattainable given the nature of the Puerto Rican market. TLD also states that only equal access to facilities will improve competition and not new authorizations to companies such as PR Tele-Com.

6. On March 29, 1990, PR Tele-Com filed an Opposition to TLD's Comments stating that the requirements proposed by TLD are unnecessary and unjustified. According to PR Tele-Com, when TLD entered the resale market approximately a year earlier, it had projected a 39% profit and said that resale service providers would enhance competition. PR Tele-Com charges TLD with seeking to delay PR Tele-Com's entry into the market concurrent with the equal access conversion date. PR Tele-Com states that there will be no cross-subsidization by Vitelco of its operation. PR Tele-Com maintains that the 30% profit it describes in its application is possible and Vitelco should not submit additional information.

7. On April 6, 1990, PR Tele-Com filed an amendment indicating that it would keep separate books for its operations, distinct from those of Vitelco. It added that there would be no jointly owned transmission or switching facilities by itself and Vitelco and concluded that any services PR Tele-Com provides through Vitelco will be under Vitelco's tariffed rates. By separate filing, PR Tele-Com provided the signature of Ernest D. Phillips Gomez (Phillips Gomez), President, to its filing of March 29, 1990. [3]

DISCUSSION

8. In authorizations of new entrants over the past decade, the Commission has recognized that increased competition in international markets is beneficial.[4] We find that the market will support additional carriers and that

the added competition will be in the public interest.[5] In light of this finding, we reject comments made by TLD which suggest that additional carriers in the Puerto Rico resale market will not enhance competition. We note that TLD was authorized to provide resale service based on its assertion, and the Commission's subsequent finding, that additional competition would benefit the public. Moreover, TLD acknowledges that "[c]ompetitive entry has further prompted substantial reductions in the dominant carrier's rates."[6] While the intended import of this statement by TLD is to cast doubt on PR Tele-Com's projection of a 30% profit margin, it also demonstrates that competition in this market has resulted in lower rates to the public. We also find no basis to deny the application based on TLD's assertion that PR Tele-Com will be unable to attain its projected 30% profit margin. We note that the 30% profit margin is merely a projection. In light of the benefits resulting from increased competition, TLD has not demonstrated that the public interest will not be served if PR Tele-Com's actual profit margin falls short of its 30% projection.

9. We also find that PR Tele-com should be treated as non-dominant for the proposed services. On April 6, 1990, PR Tele-Com filed an amendment to its application stating that: 1) it would keep separate books for its operations, distinct from those of Vitelco; 2) it would not jointly own switching or transmission facilities with Vitelco; and 3) any services it provides through Vitelco will be pursuant to Vitelco's tariffed rates. These representations conform to the guidelines specified in the *Fifth Report and Order* in the *Competitive Carrier Proceeding* concerning the provision of interexchange services by affiliates of LECs.[7] The Commission has relied on similar statements made by the Puerto Rico Telephone Authority (PRTA) in finding that PRTA's separate subsidiary, TLD, would be non-dominant in the provision of international switched voice service off the island of Puerto Rico.[8] More recently, the Commission accepted similar statements in determining that ATN should be non-dominant in the provision of switched switched voice service on a resale basis between the U.S. Virgin Islands and various overseas points.[9]

10. In light of its affiliation with ATN, we also believe that certain conditions are necessary to ensure premium access to AT&T-VI, the traditional off-island carrier, and to prevent cross-subsidization by Vitelco with respect to PR Tele-Com's provision of service in the U.S. Virgin Islands utilizing the facilities of Vitelco. Where service to, from and/or through the U.S. Virgin Islands is provided by PR Tele-Com, we require the same conditions we imposed in the *ATN Order*. First, Vitelco must adhere to the following access conditions: (1) AT&T-VI must receive access arrangements at least as desirable as its current access; and (2) to the extent that access arrangements are unequal, AT&T-VI, as the traditional off-island carrier, must receive the superior access and all other authorized carriers must receive access equal to that of Vitelco's off-island affiliates. Second, PR Tele-Com, ATN and Vitelco must comply with the nonstructural safeguards established in the *ATN Order*, including cost allocation, Customer Proprietary Network Information (CPNI) and network disclosure requirements.[10]

11. Upon consideration of the application and in view of the foregoing, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of international switched voice service on a resale basis by PR Tele-Com between the United States and overseas points.

12. Accordingly, IT IS ORDERED that application File No. I-T-C-90-055 IS GRANTED, and PR Tele-Com is authorized to provide international switched voice services by the resale of the international switched voice services set forth in AT&T's Tariffs F.C.C. Nos. 1 and 2, MCI's Tariff F.C.C. No. 1, US Sprint's Tariffs F.C.C. Nos. 1 and 2, La Telefonica Larga Distancia de Puerto Rico's Tariff F.C.C. No. 1 and St. Thomas and San Jose Telephone Company, Inc.'s Tariff F.C.C. No. 1 between the United States, including Puerto Rico, and the overseas points listed in those tariffs.

13. IT IS FURTHER ORDERED that TLD's Motion to Strike PR Tele-Com's Opposition to Comments is denied.

14. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act of 1934, as amended, 47 U.S.C. Section 203 and Part 61 of the Commissions Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

15. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F. R. §43.61 (October 1, 1989).

16. Copies of any operating agreements entered into between the applicant and its correspondents shall be filed with the Commission within 30 days of their execution.

17. This order is issued under Section 0.291 of the Commission's rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules may be filed within 30 days of public notice of this order (*see Section 1.4(b)(2)*).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] Although Atlantic Tele-Network, Inc. is the ultimate parent of Vitelco, Vitelcom, Inc. and ATN, Vitelco and Vitelcom, Inc. are wholly-owned by ATN, which is in turn wholly-owned by Atlantic Tele-Network, Inc.

[2] We note that the assets, including customer base, of Comserv have been acquired by Comserv Telecommunications, Inc. (CTI) under Chapter 7 of the United States Bankruptcy Code. In light of these circumstances, we delete that portion of PR Tele-Com's application which requests authority to resell Comserv's services.

[3] On April 10, 1990, TLD filed a Motion to Strike PR Tele-Com's Opposition to Comments because the statement by Phillips Gomez had been unsigned. TLD called for the rejection of the late filed, undated signature page. In the interest of compiling a complete record as a basis for our decision, we hereby accept PR Tele-Com's Opposition to Comments.

[4] *See e.g.*, the cases cited in Teltec Saving Communications Co., File No. I-T-C-86-062, Mimeo No. 3548, n. 2 (released April 4, 1986).

[5] FCC v. RCA Communications, Inc., 346 U.S. 86 (1953); Mackay Radio and Telegraph Co., 28 FCC 231 (1960).

[6] *See* TLD's May 2, 1990, Reply to Opposition to Motion to Strike, p. 4-5.

[7] Policies and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor (CC Docket 79-252), Notice of Inquiry and Proposed Rule Making, 77 FCC 2d 308 (1979); First Report and Order, 85 FCC 2d 1 (1980); Further Notice of Proposed Rule Making, 84 FCC 2d 445 (1981); Second Report and Order, 91 FCC 2d 59 (1982), *recon. denied*, 93 FCC 2d 54 (1983); Second Further Notice of Proposed Rule Making, FCC No. 82-187 (released April 21, 1982); Third Further Notice of Proposed Rule Making, 48 Fed. Reg. 28,292 (1983), Fourth Report and Order, 95 FCC 2d 554 (1983); Fourth Further Notice of Proposed Rule Making, 96 FCC 2d 922 (1984); Fifth Report and Order, 98 FCC 2d 1191 (1984), *recon. denied*, FCC 85-572 (released November 20, 1985); Sixth Report and Order, 99 FCC 2d 1020 (1985), *vacated and remanded sub nom.*, MCI Telecommunications Corp. v. FCC, 765 F.2d 1186 (D.C. Cir. 1985).

[8] Puerto Rico Telephone Authority, 3 FCC Rcd 5675 (1988).

[9] Atlantic Tele-Network Company, 4 FCC Rcd 8302 (1989) (*ATN Order*).

[10] We do not require at this time that Vitelco provide a cost allocation manual or require an annual attestation audit as TLD requests. Vitelco must already comply with our cost allocation and affiliate transaction rules (47 C.F.R. §32.27). Moreover, PR Tele-Com has stated that it will maintain separate books of account from those maintained by Vitelco. Thus, we conclude that these safeguards are sufficient to deter Vitelco from cross-subsidizing PR Tele-Com's services. *See ATN Order*, 4 FCC Rcd at 8303. *See also* Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, 2 FCC Rcd 1298 (1987), *modified on reconsideration*, 2 FCC Rcd 6283 (1987), *modified on further reconsideration*, 3 FCC Rcd 6701 (1988).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 87-124

In the Matter of

Access to Telecommunications
Equipment and Services by
the Hearing Impaired
and Other Disabled Persons

MEMORANDUM OPINION AND ORDER AND FURTHER NOTICE OF PROPOSED RULE MAKING

Adopted: April 12, 1990; Released: June 7, 1990

By the Commission:

1. The Organization for Use of the Telephone, Inc., the Maryland Office of People's Counsel, the National Center for Law and the Deaf, the New York League for the Hard of Hearing, the Hearing and Speech Agency of Metropolitan Baltimore, Inc., the Maryland Governor's Office for Handicapped Individuals, Telecommunications Exchange for the Deaf, Inc., Telecommunications for the Deaf, Inc., and Minnesota Telecommunications Access for Communicatively Impaired Persons (collectively Petitioners) have filed a petition for partial reconsideration of the Commission's *First Report and Order* (*Order*) in CC Docket No. 87-124, 4 FCC Rcd 4596 (1989). Petitioners ask that the Commission reconsider the decision not to expand the definition of "essential telephones" to include workplace telephones in common areas and all credit card-operated telephones, as the Commission initially had proposed. Petitioners also ask that the Commission take certain additional actions. These include 1) requiring that all workplace telephones be hearing aid compatible; 2) requiring that all hospital, hotel and motel telephones be hearing aid compatible; and 3) requiring that the minimal acceptable field strength of hearing aid compatible (HAC) telephones be increased. The Bell Atlantic Telephone Companies (Bell Atlantic), GTE Service Corporation (GTE), and the User Premises Equipment Division of the Telecommunications Industry Association (TIA/UPED) oppose the petition. Reply comments were filed by the North American Telecommunications Association (NATA) and Petitioners.

I. BACKGROUND

2. The background of the instant proceeding is stated in the *Order*. Very briefly, the Disabled Act of 1982, Public Law 97-410,[1] required, *inter alia*, that all telephones deemed "essential" be compatible with hearing aids. In 1988, responding to comments filed in an earlier phase of this proceeding, the Commission proposed to expand the definition of "essential telephones" to include all workplace telephones located in common areas and all credit card telephones.[2] The Commission noted in making this proposal that Congress did not intend for the Commission to require that all telephones be hearing aid compatible. Several months later the Hearing Aid Compatibility Act of 1988, Public Law 100-394 (HAC Act) [3] became law. That Act requires that nearly all telephones manufactured or imported for sale in this country after August 16, 1989, be hearing aid compatible.

3. In the *Order*, the Commission decided that because Congress had enacted a law requiring nearly all future telephones to be compatible with hearing aids, redefining "essential" telephones to include workplace telephones in common areas was unwarranted. The Commission noted the difficulty of enforcing a rule defining common areas. The Commission found Congress intended that, over time, nearly all workplace telephones would be replaced with ones compatible with hearing aids. *Order*, 4 FCC Rcd at 4598.

4. With regard to credit card telephones, the Commission observed that under existing Commission rules telephones must be HAC unless a HAC coin operated telephone is "nearby and readily available."[4] It also noted that the HAC Act did not require it to expand the definition of "essential" telephones to include credit card-operated units. In fact, the Commission concluded that the applicable legislative history was critical of the definitional approach to improving access by the hearing impaired to telephone services that made HAC features dependent on the location of the telephone. It further explained that its Part 68 records demonstrate there are few, if any, non-HAC credit card telephones available for attachment to the telephone network. The Commission concluded that non-HAC credit card telephones, if, indeed, any are in operation, will be replaced by HAC models over time. *Id.* at 4598.

5. In discussing the matter of raising the minimum acceptable field strength of HAC telephones, the *Order* stated that no party provided any technical data demonstrating that the current standards are inadequate or that the matter warrants further consideration. In addition, the Commission noted that Congress, in considering the HAC Act, did not mandate any changes in the standards. The Commission therefore concluded that the current standards were sufficient to meet the needs of the hearing impaired. *Id.* at 4599.

II. COMMENTS AND DISCUSSION

6. *The Rules*. Petitioners contend that the Commission erred in its decision not to expand the definition of "essential telephones" to include all credit card telephones and all telephones in common areas in the workplace. Petitioners charge the legislative history of the HAC Act anticipated that the Commission would adopt its proposed expanded definition of "essential telephones." They argue that Congress adopted a two prong approach for expanding the availability of HAC telephones. First, the enactment of the HAC Act was intended to lead to near universal HAC telephones over time. Second, by maintaining the requirement that HAC telephones be placed in essential locations, Congress was ensuring that the hearing impaired would have access to the telephone network.

7. Additionally, Petitioners accuse the Commission of employing inconsistent reasoning in deciding not to expand the HAC requirements. On the one hand, Petitioners argue, the Commission contended that a rule based on

"essential telephone" location instead of type is too difficult to enforce. On the other hand, they continue, the Commission insisted on continuing its existing location-based definitions for work station and credit card telephones. Petitioners argue in addition that there is no basis for distinguishing between telephones activated by coins and those activated by credit cards. Hearing impaired persons need access to credit card telephones just as other persons do.

8. Finally, Petitioners argue:

> It is also unreasonable to ignore the obvious fact that hotel, motel, and hospital phones frequently serve emergency purposes. All such phones should be HAC, whether existing or new. The costs for retrofitting these especially vital telephones could be minimized by allowing a reasonable phase-in period, agreed upon by all interested parties, including consumers.

Petition at p. 5. To be consistent, Petitioners urge, the Commission should require all workplace and credit card telephones to be HAC, which they contend would be consistent with congressional intent. *See* Public Law 100-394, *supra*, n. 2. In their view, the Commission has a statutory duty to establish regulations which will ensure the hearing impaired reasonable access to telephone services. *See* 47 U.S.C. § 610(a).

9. In its opposition, GTE states that the Commission cannot provide the relief Petitioners seek. According to GTE, laws currently enacted do not permit the Commission to require retrofitting of existing telephones, other than coin-operated and emergency telephones. In GTE's view, to include other telephones in this group, the Commission would have to determine that such telephones are coin-operated or emergency telephones.[5]

10. TIA/UPED also takes exception to Petitioners' request. It argues that the passage of the HAC Act mooted the Commission's proposal in the *NPRM* and that the Commission's action in the *Order* complied with the HAC Act. TIA/UPED argues that current laws forbid the Commission from requiring retrofitting of "non-essential" telephones. TIA/UPED states that if Petitioners are seeking an evolutionary change in credit card and workplace telephones the HAC Act and the Commission's *Order* are designed to achieve that intent. It therefore concludes that reconsideration of the matter is unwarranted.

11. In reply, Petitioners challenge what they believe to be GTE and TIA/UPED's position regarding the Commission's authority to reclassify other telephones as "essential." According to Petitioners, ". . . the Commission can designate . . . telephones provided for emergency use as 'essential' and require that they be retrofitted to be hearing aid compatible . . . *See* 47 U.S.C. § 610(f)." Petitioners' Reply at p. 1. They also contend that the Commission can designate telephones as frequently needed for use by persons using hearing aids and classify them as "essential" on that basis. *See* 47 U.S.C. § 610(b).[6] As the HAC Act allows the use of existing and future Commission exempted non-HAC telephones, they urge the Commission to ensure that only HAC telephones be employed at sites of frequently needed telephones in the future.

12. *Discussion*. On August 16, 1988, the HAC Act was enacted to require nearly all telephones imported or manufactured for sale in this country a year after its enactment to be HAC. New Section 710(b)(1) (47 U.S.C. § 610(b)(1)) states:

> Except as provided in paragraphs (2) and (3), the Commission shall require that-
>
> (A) all essential telephones, and
>
> (B) all telephones manufactured in the United States (other than for export) more than one year after the date of enactment of the Hearing Aid Compatibility Act of 1988 or imported for use in the United States more than one year after such date, provide internal means for effective use with hearing aids that are designed to be compatible with telephones which meet established technical standards for hearing aid compatibility.

The new law forbids the Commission to require retrofitting of existing telephones, unless it decides that such non-compatible telephones are essential telephones for the hearing impaired, provided for emergency use. 47 U.S.C. § 610(f). Congress expressly noted that its action would not result in an immediate universal HAC telephone environment, but the HAC Act does not preclude the Commission from adopting additional regulations designed to increase access to telephone service by the hearing impaired. The 1988 amendments did not change the preexisting provisions of Section 710(a) which provide the Commission authority to establish such additional regulations, provided it "consider the costs and benefits to all telephone users, including persons with and without hearing impairments." 47 U.S.C. § 610(e). *See also* H.R. Rept. No. 888, 97th Cong., 2d Sess. 8 (1982). The Commission is not precluded from adding new categories of emergency telephones. Indeed, Section 710(f) provides that the Commission shall periodically review the regulations established pursuant to Section 710.[7]

13. Upon reconsidering this matter we believe petitioners are correct that all credit card telephones and telephones in common areas of the workplace should be hearing aid compatible and treated as essential telephones provided for emergency use. In reaching this conclusion we observe, first, that the *Order* did not fully consider the potential benefits of this treatment. The use of credit card telephones in our society has proliferated to the point that they are a widely used means of communication. These telephones should be available for emergency use by persons with impaired hearing. It is impossible to determine when and where an emergency will arise, and when it does, whether a HAC credit card telephone will be accessible for a person with impaired hearing. Moreover, it is not clear the availability of a coin telephone nearby is an adequate substitute for a credit card telephone, because not all coin services accept credit card payment. Both traditional telephone companies and private service providers have increased the provision of access to communication services via credit card telephones. Hearing impaired persons' access to such stations should not be restricted simply because of their disability. We also believe that precluding the hearing impaired persons' access to credit card telephones generally impedes their ability to perform as other members of society and adds to their

burden as they attempt to compete in the employment market. Increasing the number of telephones usable by the hearing impaired means they can not only more readily deal with emergencies, but also more readily travel throughout this country and participate fully in the marketplace.

14. Second, while the potential benefits of ensuring that all credit card telephones are hearing aid compatible are significant, the costs of doing so appear to be small. As noted in the *Order*, our Part 68 records suggest there are few, if any, non-HAC credit card telephones available for marketing. Nor is it certain that all of the telephones not listed as compatible are in fact incompatible. Most of these devices were registered before the HAC requirement was instituted, and there is no evidence in the record that any of these still are in use. In any event, we do not foresee substantial expenditures being incurred to meet a HAC requirement. According to the Senate Report, the cost of retrofitting a telephone unit for HAC is $1.50.[8] With the limited number of instruments we anticipate to be affected by this rule change, the costs to society of limited or foreclosed credit card-operated telephone use by the hearing impaired exceed the cost of retrofitting or replacing telephones. Moreover, the impact of this rule is further reduced in that service providers will be given one year in which to conform. *See* Appendix A.

15. With respect to common area workplace telephones, we conclude that the cost to employers would not be substantial in order to comply with Petitioners' request. The benefits are generally the same identified for credit card telephones. Because hearing impaired employees will use common areas, these telephones are appropriately treated as "emergency" in that they may be needed during an emergency and even for frequent use. Although the *Order* is correct that eventually all such telephones will be HAC, the public interest is best served by advancing that time. The costs of this approach should be small, because such telephones are likely to constitute only a small percentage of all telephones in the workplace and most probably are already hearing aid compatible.[9] Based on the record in this proceeding, we are able to find that the benefits of adopting the common area requirement outweigh the costs. Some commenters sought more specificity with respect to the term "common area." The term is intended to cover such places as libraries, cafeterias, conference rooms and other areas which are equipped with telephones and where employees are reasonably expected to congregate. *See* Appendix A. While it would be impossible to specifically delineate all such areas exhaustively, employers should resolve questions in favor of ensuring compliance.

16. *Further Notice of Proposed Rule Making.*[10] Our current rules consist of a complex web of requirements. They attempt to anticipate precisely which telephones will be necessary for an emergency (*e.g.*, telephones in subway tunnels, as well as prisons and hospital rooms that do not have an alternative signalling device available (47 C.F.R. § 68.112(b)(1) - (3)) and have required such telephones to be hearing aid compatible since 1985. They also attempt to identify those telephones that, while considered "essential," are only "frequently needed" by the hearing impaired (*e.g.*, their work station telephones, telephones in lobbies or stores, and credit card telephones near pay telephones (47 C.F.R. § 68.112(c)) and therefore are not required to be retrofitted as of 1985 but, when replaced, must be replaced with hearing aid compatible telephones. Even among "frequently needed" telephones, not all need be replaced by HAC telephones. For example, if at least 10 percent of hotel or motel telephones are HAC, newly purchased telephones need not be (47 C.F.R § 68.112(c)(4)).[11]

17. Our tentative conclusion is that it now is appropriate to propose that all but one category of essential telephones identified as frequently needed be treated as provided for emergency use and therefore be made hearing aid compatible by May 1, 1992. We also tentatively conclude that all workplace telephones should be made hearing aid compatible. First, as a practical matter, we do not believe reliable judgments can be made as to which of these telephones will or will not be in a place "where a hearing impaired person might be isolated in the event of an emergency." Note 7, *supra*. Thus, we believe they properly may be treated as emergency telephones required to be retrofitted or replaced as of May 1, 1992. Second, although the HAC Act does not suspend the cost/benefit analysis requirement of Section 710(e) of the Act, its purpose was to expand access by the hearing impaired. We believe our proposal both serves the emergency needs of the hearing impaired and expands their access to telephone services generally.

18. As to workplace telephones, the rules currently provide only that each hearing impaired employee's primary telephone should be HAC. That requirement would appear to restrict the movement of hearing impaired persons in the work environment, thereby reducing their effectiveness as employees and potentially limiting their upward mobility, and could be life threatening in an emergency situation. Creating a work environment in which the hearing impaired can be more safe and productive improves their output and independence and provides hearing impaired employees the same access to telephones enjoyed by other employees. Moreover, establishing a rule for all workplace telephones -- subject to the limited exemptions established in the HAC Act of 1988 -- merely has the effect of advancing the time when such telephones will be HAC. We now propose to establish that time as May 1, 1992. *See* Appendix B. This should provide adequate transition time for businesses to comply. Commenters should provide information regarding the costs and benefits of this approach.

19. Regarding Petitioners' request for a rule requiring all hotel, motel and hospital telephones to be HAC, we note first that the current rules address telephones in hospitals and other confined settings. If no other emergency signalling device is available, telephones in these confined settings are "emergency use" telephones and have been HAC since January 1, 1985. Where another signalling device is available, such telephones are "frequently needed" and all new installations since January 1, 1985, have been HAC. *See* Subsections 68.112(b)(3) and (c)(5). We believe there are few, if any, non HAC telephones in the hospital environment, so the costs of making all such telephones HAC is small. The benefits of guaranteeing access in this environment cannot be questioned, and will remove definitional issues of what are emergency signalling devices and whether they are adequate. We therefore propose that all hospital telephones be required to be hearing aid compatible by May 1, 1992.[12] The rules also require that at least ten percent of all hotel and motel rooms be equipped with a HAC telephone upon replacement. Congress has cited evidence that "many hotel and motel residents have trouble finding

HAC telephones."[13] This situation is intolerable given the possibility of emergencies. We propose that all hotel and motel telephones also be required to be hearing aid compatible by May 1, 1992. *See* Appendix B. The benefits of wider access, especially emergency access, as well as greater mobility for the hearing impaired, can be readily seen. However, we request commenters to provide information regarding costs and benefits.

20. The only remaining essential telephones not treated as emergency telephones under our proposal are those in lobbies, stores and public transportation terminals used for internal, or closed circuit, communications. Examples include telephones in stores used to order merchandise and telephones in public transportation terminals used to call taxis or to reserve rental automobiles. Although Petitioners are correct that we may require retrofitting of emergency telephones, that discretion is not unbounded. Closed circuit telephones of this type are not useful in emergency situations because, unlike other telephones considered here, they cannot be used to contact emergency personnel directly. Also unlike some of the other categories of telephones, many closed circuit service telephones are likely to be HAC, given the economic incentives providers have to encourage the patronage of the hearing impaired. This may be why Petitioners did not propose they be retrofitted. In any event, we cannot conclude the benefits of according closed circuit telephones emergency treatment outweigh the costs. *See* 47 C.F.R. § 68.112(c)(3).

21. *Section 68. 316.* According to Petitioners, just as it was unreasonable for the Commission not to expand the definition of "essential telephones," it was unreasonable not to raise the magnetic field strength standard telephones must meet to be HAC. Petitioners explain that consumers' contribution to the current hearing aid compatibility standards was based on scant experience and minimal technical expertise. After several years of experience with the present standards, consumers find that the magnetic field strength is too low, and should be raised six decibels, Petitioners assert.

22. GTE believes that the current field strength standard is sufficient to meet the needs of hearing aid users. It feels that Petitioners have not provided adequate support for their requested change.[14] It notes that information Petitioners rely on does not demonstrate whether the telephones complained of were HAC or met the HAC technical standards, or whether the hearing aids were designed to meet the HAC standards. GTE states that if hearing aids incompatible with telephones are being sold, this problem should be remedied by consumers not purchasing such hearing aids, or by hearing aid manufacturers building compatible ones.

23. For its part, TIA/UPED states that some of the problems hearing aid users may be encountering could stem from poor telephone connections, a condition which even hearing individuals would find unsatisfactory. TIA/UPED also states that

> Hearing aid compatibility is not a black or white proposition. The standards require, in addition to a specific field strength, field shape factors and frequency response. Most telephones which are rated as not hearing aid compatible are capable of providing some sort of output through the magnetic pickup (telecoil) of a hearing aid, but may not provide the prescribed frequency response or orientation requirements. Most hearing aid users would be unable to detect these factors, and might falsely assume that they were using "compatible" telephones which for some reason were not "loud" enough.

TIA/UPED Opposition at p. 3, n. 4.

24. *Discussion.* The *Order* found that the record contained no evidence that would support a change in the current standards or warrant further consideration of the proposal to raise the field strength standard. *Order*, 4 FCC Rcd at 4599. Petitioners have not provided any additional information demonstrating that an increase of six decibels is warranted. They fail to show that any specific problem of HAC is a result of the current field strength standards being too low. There are many possible reasons why hearing aid users experience hearing difficulties when using a telephone, ranging from a poorly designed hearing aid to a faulty line. Moreover, there would appear to be substantial costs involved in adopting a new field strength standard. Petitioners must carry the burden of demonstrating the benefits of their proposal in light of the costs it would impose.

25. *Other matters.* Other issues Petitioners raise outside the matters they seek reconsidered, *e.g.*, a payphone amplification requirement, and interstate relay service for users of Telecommunications Devices for the Deaf (TDDs), are being addressed in our proceeding examining the establishment of an interstate TDD relay system, *Order Completing Inquiry and Providing Further Notice of Proposed Rule Making*, 4 FCC Rcd 6214 (1989).

III. CONCLUSION

26. Petitioners' request that the Commission reconsider its prior order and require that all credit card and common area telephones be made hearing aid compatible is granted. We believe substantial benefits will result, while the costs of retrofitting or replacing sooner than otherwise would be the case should be small. Petitioners' request that we go beyond the initial proposal to reach all workplace, hospital, hotel and motel telephones also is granted to the extent we propose to adopt a rule that would treat nearly all essential telephones as emergency. The effect of the rule would be to advance the time at which these telephones will be HAC. Petitioners have not requested, and we do not believe, that "closed circuit" telephones should be accorded emergency treatment. Parties commenting on the proposals made here should evaluate the costs and benefits.

PAPERWORK REDUCTION ACT

27. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and has been found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase burden hours imposed on the public.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

28. In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. § 601 *et seq.*, the Commission issues the following initial regulatory flexibility analysis with regard to the Further Notice of Proposed Rule Making:

A. Action Contemplated and Reason for Action.

(a) By this Further Notice of Proposed Rule Making, the Commission seeks to elicit comment on a proposal to change its rules to provide the hearing impaired with greater access to telecommunications services.

B. Objective.

(a) The objective of this Rule Making is to ensure that the hearing impaired have reasonable access to telecommunications services.

C. Legal Basis.

(a) The legal authority for this action is contained in Sections 1, 4(i) and (j) and 710 of the Communications Act, 47 U.S.C. §§ 151, 154(i) and (j) and 610.

D. Description, Potential Impact and Number of Small Entities Affected.

(a) The effect of the proposed rule will depend upon whether hospitals, hotels, motels and employers have already installed hearing aid compatible telephones in rooms or the workplace, respectively. The overall economic impact of the proposed rule should be small. It is believed that most employers and hospitals have purchased HAC telephones or will be acquiring new telephones in the near future. Because the rules currently require manufacture of exclusively HAC telephones for retail sale in the domestic market, buyers' selections of telephones now are limited almost entirely to HAC telephones. The proposed rule's effect on hotel and motel owners may be more dramatic as they are currently only required to equip 10 percent of their rooms with HAC telephones. However, most telephones that they have and are continuing to purchase are HAC, and the anticipated benefits of the proposed rule are expected to outweigh the additional costs.

E. Recording, Recordkeeping, and Other Compliance Requirements.

(a) No additional burdens anticipated.

F. Federal Rules that overlap, Duplicate or Conflict with these Proposed Rules.

(a) None.

G. Any Significant Alternatives to Minimize the Impact on Small Entities.

(a) None.

29. Written comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Further Notice of Proposed Rule Making, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis.

FINAL REGULATORY FLEXIBILITY ANALYSIS

30. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis with regard to the Memorandum Opinion and Order is as follows:

I. Need and purpose of this action:

The regulations affected by this Memorandum Opinion and Order were required by the Hearing Aid Compatibility Act of 1988. On reexamination of the rules adopted pursuant to that Act, the Commission finds that certain amendments are necessary to fulfill the goals established by Congress.

II. Summary of issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis:

No additional comments were filed in response to the initial Regulatory Flexibility Analysis.

III. Significant alternatives considered and rejected:

The Commission considered the alternatives raised by the parties in this proceeding and considered all the timely filed comments directed to those issues. After carefully weighing all apects of this proceeding, the Commission has adopted the most reasonable course of action under the mandate of the Hearing Aid Compatibility Act and the Communications Act, as amended.

EX PARTE PRESENTATIONS

31. For purposes of this non-restricted notice and comment Rule Making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally* Section 1.1206(a). The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. Section 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by the Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. Section 1.1203.

32. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Section 1.1202(b). Any person who makes or submits a written *ex parte* presentation shall provide on the same day it is submitted two copies of same under separate cover to the Commission's Secretary for inclusion in the public record. The presentation (as well as any transmittal letter) must clearly indicate on its face the docket number of the particular proceeding(s) to which it relates and the fact that two copies of it have been submitted to the Secretary, and must be labeled or captioned as an *ex parte* presentation.

33. Any person who in making an oral *ex parte* presentation presents data or arguments not already reflected in that person's written comments, memoranda, or other previous filings in that proceeding shall provide on the day of the oral presentation an original and one copy of a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summa-

rizes the data and arguments. The memorandum (as well as any transmittal letter) must clearly indicate on its face the docket number of the particular proceeding and the fact that an original and one copy of it have been submitted to the Secretary, and must be labeled or captioned as an *ex parte* presentation, Section 1.1206.

ORDERING CLAUSES

34. Pursuant to applicable procedures set forth in 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before **August 1, 1990,** and reply comments on or before **September 7, 1990.** All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C.

35. Accordingly, pursuant to Sections 1, 4(i) and (j) and 710 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j) and 610, IT IS ORDERED that a Further Notice of Proposed Rule Making IS INSTITUTED.

36. IT IS FURTHER ORDERED, pursuant to Sections 1, 4(i) and 710 of the Communications Act, 47 U.S.C. §§ 151, 154(i) and 610, that Part 68 of the Commission's Rules and Regulations is amended as set forth in Appendix A below.

37. IT IS FURTHER ORDERED, that the Secretary shall cause summaries of this Order and this Further Notice of Proposed Rule Making to be printed in the Federal Register and shall send a copy to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*, (1980)).

38. IT IS FURTHER ORDERED, that the rule amendments adopted herein shall become effective 60 days after publication in the Federal Register.

39. IT IS FURTHER ORDERED, that the petition for partial reconsideration filed by Petitioners IS GRANTED IN PART, to the extent indicated herein, but is OTHERWISE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

Part 68 of the Commission's Rules and Regulations (Chapter I of Title 47 of the Code of Federal Regulations, Part 68) is amended as follows:

1. The authority citation for Part 68, continues to read as follows:

Authority: Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; (47 U. S. C. 154, 155, 303).

2. Section 68.4 is amended by revising paragraph (a)(2) to read as follows:

§ 68.4 Hearing aid-compatible telephones.

* * * * *

(a)(2) Unless otherwise stated and except as provided in Section 68.112(c)(3), every telephone installed on or after January 1, 1985, which is subject to Section 68.112 must be hearing aid-compatible.

* * * * *

3. Section 68.112 is amended by removing paragraph c(1); redesignating paragraphs (c)(2), (3), (4) and (5) as (c)(1), (2), (3) and (4); adding paragraph b(4) and revising paragraph b(1) to read as follows:

§ 68. 112 Hearing aid-compatibility.

* * * * *

(b) Emergency use telephones. Telephones "provided for emergency use" include the following:

(1) Telephones in places where a person with impaired hearing might be isolated in an emergency, including, but not limited to, elevators, automobile, railroad or subway tunnels, highways and common areas of the workplace, including libraries, reception areas, and similar locations where employees are reasonably expected to congregate. Telephones located in common areas of the workplace are required to be hearing aid-compatible no later than May 1, 1991.

* * * * *

(4) All credit card operated telephones, whether located on public property or in a semi-public location (*e.g.* drugstore, gas station, private club), unless a hearing aid-compatible coin-operated telephone providing similar services is nearby and readily available. However, regardless of coin-operated telephone availability, all credit card operated telephones must be made hearing aid compatible when replaced, or by May 1, 1991, which ever comes sooner.

APPENDIX B

It is proposed to amend Part 68 of the Commission's Rules and Regulations (Chapter I of Title 47 of the Code of Federal Regulations, Part 68) as follows:

1. The authority citation for Part 68, continues to read as follows:

Authority: Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; (47 U.S.C. 154, 155, 303).

2. Section 68.4 is proposed to be amended by revising paragraph (a)(2) to read as follows:

§ 68. 4 Hearing aid-compatible telephones.

* * * * *

(a)(2) Unless otherwise stated and except for telephones used with public mobile services, telephones used with private radio services and secure telephones, every telephone listed in Section 68.112 must be hearing aid-compatible.

* * * * *

3. Section 68.112 is proposed to be amended by removing paragraphs (c)(1), (c)(3) and (c)(4); revising and redesignating paragraph (c)(2) as paragraph (c); adding paragraph (b)(5) and revising paragraphs (b)(1) and (b)(3) to read as follows:

§ 68.112 Hearing aid-compatibility.

* * * * *

(b) *Emergency use telephones*. Telephones "provided for emergency use" include the following:

(1) Telephones in places where a person with impaired hearing might be isolated in an emergency, including, but not limited to, elevators, automobile, railroad or subway tunnels, highways and all areas of the workplace, including common areas (libraries, reception areas and similar locations where employees are reasonably expected to congregate). With respect to the workplace, non-common area telephones are not required to be hearing aid-compatible until May 1, 1992, except for telephones made available to a hearing impaired employee for use by that employee in his or her employment duty. Such telephones shall be hearing aid-compatible prior to that date, if and when replaced.

* * * * *

(3) Telephones needed to signal life-threatening or emergency situations in confined settings, including, but not limited to, rooms in hospitals, residential health care facilities for senior citizens, convalescent homes, and prisons. If an alternative means of signalling life-threatening or emergency situations is available, a hearing aid-compatible telephone is not required until May 1, 1992, unless replaced before that time.

* * * * *

(5) Until May 1, 1992, telephones in hotel and motel rooms replaced after January 1, 1985, must be hearing aid-compatible unless at least ten percent of the rooms in a hotel or motel are equipped to accommodate a hearing impaired customer. A room is equipped to accommodate a hearing impaired customer if (i) it contains a permanently installed hearing aid-compatible telephone; or (ii) it contains a telephone which will accept a plug-in hearing aid-compatible handset, which shall be provided to the hearing impaired customer by the hotel or motel; or (iii) the room contains a jack into which a hearing aid-compatible telephone provided to the customer by the hotel or motel may be plugged (*i.e.*, in addition to a permanently installed telephone which is not hearing aid-compatible). If fewer than ten percent of the rooms in a hotel or motel are hearing aid-compatible, when replacing a telephone the hotel or motel must, until the ten percent minimum is reached: (A) replace it with a hearing aid-compatible telephone, or (B) procure and maintain a plug-in hearing aid-compatible telephone handset which it will provide to a hearing impaired customer upon request at check-in. As of May 1, 1992, all telephones in hotels and motels rooms are required to be hearing aid-compatible.

(c) *Telephones frequently needed by the hearing impaired.* Closed circuit telephones, *i.e.*, telephones which cannot directly access the public switched network, such as telephones located in lobbies of hotels or apartment buildings; telephones in stores, which are used by patrons to order merchandise; telephones in public transportation terminals which are used to call taxis or to reserve rental automobiles, need not be hearing aid-compatible until replaced.

FOOTNOTES

[1] The Telecommunications for the Disabled Act of 1982, Public Law 97-410, 96 Stat. 2043, as codified in Section 710 of the Communications Act of 1934, as amended, (the Act), 47 U.S.C. § 610.

[2] *See* Notice of Proposed Rule Making and Further Notice of Inquiry (*NPRM*), CC Docket No. 87-124, 3 FCC Rcd 1982, 1984-85 at paras. 23 and 24 (1988).

[3] The Hearing Aid Compatibility Act of 1988, Public Law 100-394, 102 Stat. 976, codified as 47 U.S.C. § 610.

[4] *See* 47 C.F.R. § 68.112(c)(1).

[5] NATA also supports this view. *See* NATA Reply at p. 2.

[6] Petitioners note that telephones classified as frequently needed are not required to be retrofitted even though they are deemed "essential." *See* 47 U.S.C. § 610(f).

[7] The House Report accompanying the HAC Act of 1988 specifically provides that "The Committee intends the term [telephones provided for emergency use] be defined to include, but not be limited to telephones in elevators, mine shafts, and any other place where a hearing impaired person might be isolated in the event of an emergency." H.R. Rept. No. 100-674, 100th Cong. 2d Sess. (1988) at 15. *See also* Report and Order in CC Docket No. 83-427, 49 Fed. Reg. 1352 (1983) at para. 27 (Commission will consider adding new categories of emergency use telephones in the future).

[8] Senate Report No. 100-391, 100th Cong. 2d Sess. at p. 5 (1988).

[9] Because of the small number of non-HAC telephones at issue here, we believe the Commission's earlier discussion in the *Order* regarding enforceability problems was overstated. *See* 4 FCC Rcd at 4598.

[10] Appendix B contains the proposed rules.

[11] The issue was further confused by the *Order* implementing the HAC Act. Section 68.4 was inadvertently reworded in a way to require retrofitting of all hearing impaired employee work station telephones, not just those telephones replaced after January 1, 1985. The rewording had a similar effect for telephones in lobbies (47 C.F.R. § 68.112(c)(3) and hospital rooms without alternative signalling devices (47 C.F.R. § 68.112(1)(5)). None of the commenters has raised this issue on reconsideration, but in this order we return to the *status quo ante*. The existing anomalies should be cured upon implementation of the rules proposed in the further notice.

[12] We include in this proposal the other "confined settings" addressed in Section 68.112(b)(3) and (c)(5), including residential health care facilities for senior citizens, convalescent homes, and prisons.

[13] Senate Report, note 8 *supra*, at p. 3.

[14] *See also* Bell Atlantic Comments at p. 2.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of:

KARGO BROADCASTING, INC. (Assignor) File No. BALH-890302HF

and

BONNEVILLE INTERNATIONAL CORPORATION (Assignee)

For Assignment of License of Station KRPN(FM), Roy, Utah

MEMORANDUM OPINION AND ORDER

Adopted: May 11, 1990; Released: June 7, 1990

By the Commission:

1. The Commission has before it: (a) an application for assignment of license of Station KRPN(FM), Roy, Utah, from Kargo Broadcasting, Inc. ("Kargo") to Bonneville International Corporation ("Bonneville"); (b) a request for waivers of 47 C.F.R. § 73.3555 filed in conjunction with the above application; (c) Petitions to Deny filed by Brown Broadcasting Company/Utah ("Brown"), licensee of KKAT(FM), Ogden, Utah; Communications Investment Corporation ("CIC"), licensee of KALL(AM), and the corporate parent of the licensees of KLCY(FM) and KUTV(TV), all licensed to Salt Lake City; and Price Broadcasting Company ("Price"), licensee of KCPX(FM), Salt Lake City;[1] (d) six Informal Objections to the proposed assignment[2]; (e) comments filed by KJQN(FM) and KJQN(AM), Salt Lake City, in support of the proposed assignment; and (f) related pleadings.

2. Bonneville, the proposed assignee, or one of its related organizations, currently owns KSL(TV), Salt Lake City, a VHF CBS affiliate; KSL(AM), Salt Lake City, a Class I-A station; KBYU-TV, Provo, Utah, a non-commercial VHF station; KBYU-FM, Provo, a Class C non-commercial FM station and *The Deseret News*, a daily newspaper in Salt Lake City. [3] Section 73.3555 of the Commission's Rules prohibits an assignment of an FM station when the predicted Grade A contour of a TV station under common control encompasses the entire community of license of the FM station and prohibits the assignment of an FM station to a party which publishes a daily newspaper in a community fully encompassed by the FM station's 1 mV/m contour.[4] As will be discussed below, we find that Bonneville has failed to set forth adequate justification to support a waiver of 47 C.F.R. § 73.3555.

3. *The Waiver Requests*. Bonneville requests that the Commission waive the one-to-a-market rule. In support of its request, Bonneville asserts that KRPN and its "sister" station KZQQ(AM)[5] are in dire financial straits and that KRPN, if not sold, will likely go bankrupt and dark within a year. Bonneville also alleges that Kargo has diligently sought buyers for its station, but the poor signal quality and the difficulties encountered in reaching Salt Lake City have contributed to a dearth of potential buyers. Additionally, it is argued that because of the abundance of media outlets in the Salt Lake City market, there is no potential for undue concentration of control. Finally, Bonneville states that numerous benefits would result from the proposed assignment. Specifically, Bonneville argues it will achieve economies of scale and cost savings; it will be able to co-locate its corporate offices; it will gain programming and service benefits; it can share equipment among its various stations; and it will prevent KRPN from going dark.

4. As for the newspaper/broadcast rule, Bonneville claims the rule does not apply in this instance. Bonneville submits field strength measurements attesting that the 1 mV/m contour does not encompass all of Salt Lake City, the city in which Bonneville's *The Deseret News* is published. Consequently, Bonneville contends, the prohibition is inapplicable. Bonneville asserts, however, that if the Commission finds the newspaper/ broadcast prohibition applicable, that a waiver is justified in this instance for essentially the same reasons as for waiver of the radio/TV ownership rule.

5. *The Petitions to Deny*. The petitioners argue that Bonneville's waiver requests should be denied. Specifically, they state that the one-to-a-market waiver request does not meet the Commission's requirements as Salt Lake City is not in the top 25 markets[6] and KRPN is not a "failed" station, currently in bankruptcy or off the air. Under the Commission's more rigorous case-by-case standard, the petitioners argue that Bonneville has failed to show that any marginal increases in efficiencies resulting from the assignment would outweigh the impact of Bonneville's media concentration within the Salt Lake City market. Further, the petitioners argue that the newspaper/broadcast rule is applicable since the predicted 1 mV/m contour of KRPN does encompass all of Salt Lake City. Therefore, the Petitioners argue that the supplemental field strength tests are irrelevant. The Petitioners distinguish the authority cited by Bonneville and illustrate how none of the cases cited prove the inapplicability of the newspaper/broadcast rule or demonstrate the basis for a waiver.[7]

6. In its consolidated Opposition to Petitions to Deny, Bonneville argues that each petitioner is a competitor in the Salt Lake City market and therefore has a financial interest in seeing KRPN go dark. While conceding that it is not due the favorable consideration afforded proposed combinations in the top 25 markets with 30 or more voices or to failed stations, Bonneville points to the abundance of media voices in Salt Lake City, the economic woes of KRPN and KZQQ, the efficiencies which will result and the poor quality KRPN signal in Salt Lake City. Bonneville again maintains that the newspaper/broadcast rule is inapplicable because terrain factors prevent KRPN's 1 mV/m signal from reaching all of Salt Lake City. Finally, Bonneville argues that the supplemen-

tal submission, showing KRPN's poor signal quality within pockets of Salt Lake City, provides a basis for a grant of a waiver.

7. The petitioners, in their respective Replies to Opposition to Petition to Deny, while defending their objective in filing against the application, state that Bonneville has failed to demonstrate conclusively that KRPN, but not KZQQ, is failing and that Bonneville has not provided decisive documentation that Kargo is unable to find any other buyers. It is further alleged, that while some economies of scale may result, the anticompetitive effects far outweigh any gains. The petitioners conclude that the public interest demands that the Commission deny the proposed assignment. The petitioners also continue to argue in their Replies that the newspaper/broadcast rule does apply to the instant application and no rule waiver is justified.

DISCUSSION

8. *Radio / TV Cross - ownership*. The Commission recently adopted the *Second Report and Order* in MM Docket 87-7, 4 FCC Rcd 1741 (" *Second Report and Order* "), *on reconsideration*, 4 FCC Rcd 6489 (1989) (" *Reconsideration Order* ") in which it modified the one-to-a-market waiver policy in certain circumstances. The first instance in which the Commission looks with favor upon a request for waiver of the one-to-a-market rule is when the radio and television stations involved are located in the top 25 ADI television markets as defined by Arbitron Ratings Company, and in addition where, following the proposed combination, there will remain at least 30 separately owned, operated and controlled broadcast licensees or "voices." 4 FCC Rcd at 1741. Second, the Commission stated that it is predisposed to grant applications with waiver requests in situations dealing with a "failed" broadcast station. For this purpose, the Commission considers a station failed when it has not been operating for a substantial period of time (*e.g.*, four months or more) or when the station is involved in bankruptcy proceedings.[8] 4 FCC Rcd at 1752. These standards for waiver are inapplicable to the instant application.[9]

9. Waiver requests in which neither of the above two standards apply will be evaluated on a more rigorous case-by-case basis to determine whether the proposed combination serves the public interest. In making the public interest determination, the Commission evaluates and balances other specific factors against its long-standing interest in maximizing competition and promoting diversity. These other factors are: (a) the benefits which would accrue from the proposed combination; (b) the types of facilities involved; (c) the number of other media outlets in the relevant market already owned by the applicant; (d) the financial difficulty undergone by the station(s) and whether the station was unsuccessfully offered for sale; and (e) the competitiveness of the market involved. 4 FCC Rcd at 1753. An evaluation of these factors in conjunction with the present proposal does not support the instant waiver request.[10]

10. First, and most significantly, the types of facilities involved and the number of media outlets already owned by Bonneville do not support the requested waiver. Bonneville's newspaper, the *Deseret News*, is the second largest newspaper in Salt Lake City. As for the television stations in Salt Lake City, there are nine licensed TV stations (6 commercial and 3 non-commercial), two of which are owned by Bonneville. Both KSL(TV) and KBYU-TV[11] are VHF stations, with KSL(TV) affiliated with CBS network. Additionally, Arbitron ratings company, which compiles a list of counties in which a television station is viewed for a specific amount of time, lists Salt Lake City's area of dominant influence for KSL(TV) as including all of Utah, and several counties in Colorado, Idaho, Montana, Nevada and Wyoming. Although there are 27 FM and 22 AM stations in the Salt Lake City market, KSL(AM) is a clear channel, Class I-A station. Not only is KSL(AM) operating with the most power allowed an AM station under the Commission's Rules, it is the only clear channel AM station in the state of Utah. In this same regard, KBYU-FM is a Class C station operating with maximum facilities.

11. Accordingly, Bonneville already owns a substantial number of media outlets in the Salt Lake City market, significantly more than the entities to which we have already granted waivers of the one-to-a-market rule. Moreover, its stations possess the most powerful signal strength possible in each of the broadcast media, and represent the class of stations traditionally known to attract the largest audience share. The station Bonneville wishes to acquire, KRPN, is also a powerful Class C station. Therefore, this is not a situation comparable to those in which the Commission has been predisposed to grant waivers of the one-to-a-market rule--that is, this is not a case involving a station of the type that often has difficulties surviving in a competitive market, *e.g.*, UHF TV, small AM or Class A FM stations. In terms of power and competitive position, the stations involved in the instant proposal are exactly the opposite type.[12]

12. Further, although Bonneville states some benefits that will accrue from the proposed combination, we find that they are not so substantial as to justify a waiver of the rule. As the Commission stated in the *Second Report and Order*, applicants for a waiver "face a heavy burden in relying on these benefits." 4 FCC Rcd at 1753. The Commission recognizes that with any combination of two or more stations serving the same market some efficiencies will result. Bonneville, however, has failed to point to any potential benefits of the proposed assignment above and beyond the efficiencies of any other combination of commonly owned stations serving the same market. In reality, we find that the potential benefits to be achieved by this combination will likely be less than those of a typical radio/TV combination since the distances between all the co-owned stations within this market are so great. (*E.g.*, Commission records indicate that the transmission facilities of KRPN are some 43.1 miles apart from those of KSL(TV), 37.5 miles apart from those of KSL(AM), and 47.2 miles apart from those of KBYU-TV.)

13. Moreover, we do not find that KRPN's current financial situation warrants a waiver of our one-to-a-market rules. An examination of Bonneville's financial exhibit reveals that only $100,000 of the total loss of $600,000 as claimed was sustained by KRPN.[13] Further, KRPN's negative cash flow is not the equivalent of bankruptcy. Additionally, the year with the largest loss was 1984, the first of the four years represented in the exhibit. Over 40% of KRPN's share of the total loss was incurred in that year. The following years, although still showing a loss, denoted a marked improvement, with 1987, the most recent year in which figures were supplied, as the best of all four years. Accordingly, Bonneville's exhibit actually indicates that KRPN's situation is improving. Further-

more, any losses sustained by KRPN in 1984 are not indicative of the station's future potential strength, as Kargo[14] did not complete construction and file for a license until October 1983[15] and was not granted a license until February 29, 1984. Additionally, Kargo applied for and was granted a modification of its facilities in order to replace its antenna in May 1984,[16] thereby incurring additional expenses for that year.[17]

14. As to market competitiveness, Bonneville argues that there are at least 30 media "voices" in the Salt Lake City market. However, the Commission in its *Reconsideration Order* refused to extend the "top 25 market/30 voice" standard to all markets with 30 or more voices and reaffirmed that the public interest required the imposition of different waiver policies for proposed combinations in markets below the top 25. While the Commission indicated it "would endeavor to treat all waiver petitions, both within and outside the 25 largest markets, that are shown to be factually comparable in a comparable manner," 4 FCC Rcd at 6492, it also stressed that waiver petitions in markets below the top 25 markets require more information and entail greater analysis, "and must be considered on a case-by-case basis in light of the relevant factors." *Id.* at 6491. As discussed above, while every factor is not necessarily relevant to all cases, Bonneville has not made a sufficient showing with respect to any of the first four factors. Moreover, in analyzing the market competitiveness factor in markets below the top 25, as is the case here, consideration must be given to the actual media types and facilities so that the potential impact of a proposed combination can be better evaluated. In that regard, as discussed above, Bonneville's existing interests in the market do raise a concern regarding market competitiveness if the waiver were granted.

15. In recent cases, the Commission has granted one-to-a-market waivers based on the substantial showing advanced by the parties of the potential benefits which will be achieved. In *Great American Television and Radio Co., Inc.*, 4 FCC Rcd 6347 (1989), for example, the Commission granted a waiver request by Great American to retain its ownership interest in WKRC-TV, WKRC(AM) and WKRQ(FM), all licensed to Cincinnati, Ohio, and WDAF-TV, WDAF(AM) and KYYS(FM), all licensed to Kansas City, Missouri. Although the markets of Cincinnati and Kansas City are ranked 29th and 28th respectively, and therefore not entitled to the favorable consideration afforded by the *Second Report and Order*, the Commission found that a grant of the waiver would be in the public interest because Great American demonstrated that the Cincinnati and Kansas City markets are comparable to the top 25 markets in terms of diversity of voices and economic competition, and "extensively documented the substantial economic efficiencies derived from its ongoing joint operations." *Great American*, 4 FCC Rcd at 6348-6349. As shown above, Bonneville has failed to provide the Commission with similar documentation as to any factor sufficient to justify a waiver.[18] Moreover, as also discussed above, Bonneville's media interests in the market raise significant concerns regarding the effect on competition and diversity if they were to purchase KRPN.

16. Based on the foregoing, we conclude that Bonneville has failed to establish the requisite basis necessary to justify a waiver of the radio/TV rule. Accordingly, the request will be herein denied. Having found that Bonneville has not supported the basis for a waiver of the radio/TV rule, we need not reach the issue of the newspaper/broadcast prohibition.

CONCLUSION AND ORDER

17. In conclusion, we find that a grant of the present application for assignment of license would violate Section 73.3555 of the Commission's Rules. Additionally, we find that a waiver of our one-to-a-market rules is not warranted as Bonneville has failed to demonstrate that a waiver is justified in this instance and would best serve the public interest pursuant to the standards established in the *Second Report and Order*. Accordingly, the request for a waiver of 47 C.F.R. § 73.3555(b)(2) IS HEREBY DENIED. IT IS FURTHER ORDERED, THAT the application for assignment of license of KRPN from Kargo Broadcasting, Inc. to Bonneville International Corporation IS HEREBY DISMISSED.[19]

FEDERAL COMMUNICATIONS COMMISSION

Donna Searcy
Secretary

FOOTNOTES

[1] As the arguments raised in the Petitions to Deny are virtually identical, Brown, CIC and Price will herein be referred to collectively as "the petitioners" unless specifically referred to by name.

[2] The Informal Objections in this matter were filed by Richard Andrews, Salt Lake City; Shawn Gillard, Salt Lake City; Kent Griffiths, West Jordan, Utah; L. Long, Salt Lake City; Mike C. Rose, Salt Lake City and H. P. Sheffield, Kaysville, Utah.

[3] KSL(TV) and KSL(AM) are licensed to Bonneville. Bonneville is 100% owned by Deseret Management Corporation ("DMC"). The Corporation of the President of the Church of Jesus Christ of Latter-Day Saints ("the Church") is the sole shareholder of DMC. (The Corporation of the President is a perpetual corporation represented by each succeeding President of the Church.) DMC is the sole shareholder of the Deseret News Publishing Company, publisher of the *Deseret News*, a daily newspaper in Salt Lake City. The Church owns Brigham Young University, a corporation which is the licensee of both KBYU-TV and KBYU-FM.

[4] Section 73.3555 of the Commission's Rules states, in pertinent part:

> **§ 73.3555**
>
> * * * * *
>
> (b) No license for an AM, FM, of TV broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates, or controls one or more such broadcast stations and the grant of such license will result in:
>
> * * * * *

(2) The predicted 1 mV/m contour of an existing or proposed FM station, computed in accordance with § 73.313, encompassing the entire community of license of an existing or proposed TV broadcast station(s) or the Grade A contour(s) of the TV broadcast station(s), computed in accordance with § 73.684, encompassing the entire community of license of the FM station.

(c) No license for an AM, FM, or TV Broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates, or controls a daily newspaper and the grant of such license will result in:

* * * * *

(2) The predicted 1 mV/m contour for an FM station, computed in accordance with § 73.313, encompassing the entire community in which such newspaper is published.

[5] KZQQ(AM), West Valley City, Utah, is licensed to Group Communications, Inc., and not Kargo. However, Bonneville refers to KZQQ as a sister station of KRPN, as both entities incorporate the same basic control structure. Mr. Sherwin Brotman and Mr. Gene Guthrie control a total of 90% of Kargo's voting stock; both also control a total of 67.19% of Group's voting stock.

[6] Salt Lake City is the nation's 40th television market as rated by Arbitron.

[7] The Informal Objections filed in this matter all argue that Bonneville already has too much influence in the Salt Lake City market. The Objectors therefore conclude that the Commission should not grant the instant assignment application. KJQN, in comments filed in support of the proposed assignment, states that it currently holds a construction permit to move its transmitter to KRPN's site, that the site needs improvements and that Bonneville has the resources to improve that site. Additionally, KJQN states that it does not believe that Bonneville will gain any competitive advantage from the acquisition of KRPN.

[8] *See Tulsa 23*, 5 FCC Rcd 727 (1990). In *Tulsa* the Commission found that documentation that a station had incurred losses totaling over $5.2 million in the course of seven years was insufficient to meet the failed station standard.

[9] Bonneville concedes that these two criteria for granting a waiver are not present. KRPN is not located in a top 25 market and there has been no suggestion on the record that Kargo, licensee of KRPN, is involved in bankruptcy proceedings.

[10] On reconsideration, the Commission stated that not all of these factors necessarily "will be relevant in every case." 4 FCC Rcd at 6491. In particular, the Commission stated that in smaller markets (not before us here), "of particular importance would be demonstrated financial difficulties and the practical question of whether a waiver grant, by permitting continued viable service from an existing station or the activation of a new station, would in fact increase or decrease the vigor of competition and diversity in the market." *Id.* at 6491-92.

[11] Although 47 C.F.R. § 73.3555 does not prohibit the common ownership of an FM and a non-commercial TV station in the same market, the ownership of additional non-commercial stations is properly considered in a determination of overall market influence.

[12] Bonneville notes that in *KSL, Inc.*, 62 FCC 2d 254 (1976), in response to a Petition by the U.S. Department of Justice which sought to break up the AM/FM/TV/Newspaper combination owned by Bonneville, the Commission stated that, at the time, Bonneville presented no threat of a monopoly of the media in Salt Lake City. However, in that case the Commission was acting upon a different set of policy concerns than those before us presently, namely, the guidelines established in the *Second Report and Order* in Docket No. 18110, 50 FCC 2d 1046 (1975), *recon. granted in part*, 53 FCC 2d 589 (1975), *aff'd sub nom. FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978)(" *1975 Second Report and Order* "). There the Commission decided that where ownership patterns had been established before the guidelines of Docket No. 18110 had been established, stability and continuity would not be disturbed unless it could be shown that an entity's concentration was so egregious (*e.g.*, the market's only newspaper and only TV station under the same control) that divestiture was necessary.

[13] The remaining amount of the loss claimed by Bonneville was sustained by KRPN's "sister" station, KZQQ(AM).

[14] The construction permit (BPH-810420AD) was originally granted to Margarette Kathelene Wamsley who voluntarily assigned it to Kargo (BAPH-830819HD). The assignment application was granted on October 28, 1983.

[15] File No. BLH-831017AD.

[16] File No. BMLH-840507CH.

[17] In addition, with respect to financial difficuties, although attempts to sell KRPN are listed, Bonneville neither indicated the list price nor the fair market value of KRPN throughout Kargo's attempts to sell the station. The Commission has stated that "there is a need to protect against a station's being offered for sale at a price out of keeping with its true value so that the owners could seek a waiver on the basis of the inability to dispose of the station." *Multiple Ownership*, 50 FCC 2d 1046 (1975).

[18] Other recent cases granting waivers are also distinguishable. In *Tulsa 23*, 5 FCC Rcd 727 (1990), the Commission found that compelling evidence had been presented that the station had been offered for sale unsuccessfully for two years. Further, the assignee presented evidence that the station would be unable to meet its current financial obligations without additional infusions of capital. The Commission viewed the station as "economically similar to a bankrupt station," 5 FCC Rcd at 29, and stated that the proposed joint operation may offer the only opportunity for the station to remain on the air. In *Holston Valley*, 5 FCC Rcd 507 (1990), the station had been purchased out of bankruptcy in 1986 by the present owners but it had never fully recovered. The Commission referred to the station as "virtually a failed station," 5 FCC Rcd at 508, and emphasized the "severe financial difficulties of th[e] small market station" (Bristol-Kingsport-Johnson City, TN/VA; 86th largest market). *Id.*

[19] A full hearing pursuant to 47 U.S.C. § 309(b) is not required as the Commission has fully considered and denied Bonneville's presentation in support of its waiver request. *See U.S. v. Storer*, 351 U.S.192, 205 (1956).

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN. Docket No. 90-178

In the Matter of

Indiana Region
Public Safety Plan

ORDER

Adopted: May 30, 1990; Released: June 7, 1990

By the Chief, Private Radio Bureau and the Chief Engineer:

1. On December 26, 1989, Region 14 (Indiana) submitted its public safety plan to the Commission for review. The plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in its region. On March 5, 1990, Indiana filed revisions to the plan, based on conversations with the Commission's staff.

2. The Indiana plan was placed on Public Notice for comments on March 30, 1990, 55 FR 11646 (Mar. 29, 1990). The Commission received no comments in this proceeding.

3. We have reviewed the plan submitted for Indiana and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the *Report and Order* in Gen. Docket No. 87-112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in Indiana.

4. Accordingly, IT IS ORDERED that the Public Safety Radio Plan for Indiana IS ACCEPTED. Furthermore, licensing of the 821-824/866-869 MHz band in Indiana may commence immediately.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Chief, Private Radio Bureau

Thomas P. Stanley
Chief Engineer

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-421

In re Applications of

MID-OHIO/CAPITAL COMMUNICATIONS LIMITED PARTNERSHIP	File No. BPH-870515MK
SCIOTO BROADCASTERS, LIMITED PARTNERSHIP	File No. BPH-870514MU
MID-OHIO RADIO LIMITED	File No. BPH-870515NM
CLEAR CHANNEL COMMUNICATIONS, INC.	File No. BPH-870515NN
HORACE E. PERKINS	File No. BPH-870515NP
MCCALL BROADCASTING, INC.	File No. BPH-870515NU

For Construction Permit
for a New FM Station on
Channel 298A in Columbus, Ohio

ORDER

Adopted: May 29, 1990; **Released: June 7, 1990**

By the Commission:

1. Before the Commission for consideration are a Decision, Mid-Ohio/Capitol Communications Limited Partnership, 4 FCC Rcd 8125 (Rev. Bd. 1989); an Application for Review filed by McCall Broadcasting, Inc. on December 18, 1989; and Oppositions to the Application for Review by Scioto Broadcasters, Limited Partnership and Horace E. Perkins filed on January 2, 1989.

2. ACCORDINGLY, IT IS ORDERED, That, pursuant to 47 C.F.R. § 1.115(g), the Application for Review filed on December 18, 1989 by McCall Broadcasting, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: May 25, 1990

PROCEDURES REGARDING NOTIFICATION TO THE FEDERAL COMMUNICATIONS COMMISSION OF THE FILING OF STATE TARIFFS BY THE BELL OPERATING COMPANIES RELATING TO OPEN NETWORK ARCHITECTURE

The Chief, Common Carrier Bureau, has received the attached letter from the Information Industry Liaison Committee (IILC) requesting the assistance of the Tariff Division in facilitating the dissemination of information regarding tariffs filed with the various state public utility commissions in conjunction with implementation of the Federal Communications Commission's (Commission) Open Network Architecture (ONA) policy.

In its letter, the IILC has detailed the difficulty that exists for interested parties attempting to keep track of the ONA filings made with the various state commissions. As a result of considerable discussion, the members of the IILC have developed a procedure for tracking these state filings at the federal level and they are requesting that this Commission implement their plan on a trial basis. By this Public Notice we are initiating the procedure as detailed in the IILC letter, on a trial basis.

Therefore, effective immediately, those Regional Bell Operating Companies (RBOCs) electing to participate in the procedure developed by the IILC, should commence submitting the attached forms for those state filings at issue here. These completed forms (1) should be addressed to the Chief, Tariff Division, (2) should be clearly labelled as submissions relating to state ONA filings, and (3) should be delivered simultaneously and by the same means to both the Tariff Division and the Commission's commercial contractor (International Transcription Services, Inc.) in the same manner as copies of Commission tariff filings. These submissions will not require payment of a tariff filing fee.

The Tariff Division will accumulate these submissions and will publish a supplement to its normal daily Tariff Transmittal Public Reference Log on Wednesday of each week that will include the information from all the forms submitted since the last supplemental log. The forms submitted by the RBOCs will be retained in the Tariff Division's Public Reference Room for reference by the public.

This procedure will be in effect for an initial trial period of six months from the release date of this Notice. We request interested parties to submit comments concerning this procedure no later than October 1, 1990. Parties should address the effectiveness of this procedure, the burden on filing parties as well as the burden on requesting parties, suggestions for modification of the procedure, and finally, the issue of whether this procedure should be continued on either a trial basis or a permanent basis. These comments should be addressed to John Cimko, Chief, Tariff Division, Federal Communications Commission, 1919 M St., N.W., Room 518, Washington, D.C. 20554, and should be labelled as "Comments Regarding FCC Trial Notification Procedures for State ONA Filings".

Any questions concerning this procedure should be referred to Judy Nitsche, Chief, Tariff Review Branch, 1919 M St., N.W., Room 518, telephone 202-632-5550.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: May 29, 1990

COMMENTS INVITED ON NORTHERN CALIFORNIA REGIONAL PUBLIC SAFETY PLAN

The Commission has received the public safety radio communications plan for the Northern California area (Region 6).

In accordance with the Commission's Report and Order in General Docket No. 87-112 implementing the Public Safety National Plan, parties are hereby given thirty days from the date of Federal Register publication of this public notice to file comments and fifteen days to reply to any comments filed. (*See* Report and Order, General Docket No. 87-112, 3 FCC Rcd 905 (1987), at paragraph 54.)

In accordance with the Commission's Memorandum Opinion and Order in General Docket No. 87-112, Region 6 consists of all of Northern California to the southernmost borders of Monterey, Kings, Tulare, and Inyo Counties. (*See* General Docket No. 87-112, 3 FCC Rcd 2113 (1988).)

Comments should be clearly identified as submissions to *General Docket 90-287, Northern California Area - Region 6*, and commenters should send an original and five copies to the Secretary, Federal Communications Commission, Washington, DC 20554.

Questions regarding this public notice may be directed to Maureen Cesaitis, Private Radio Bureau, (202) 632-6497 or Fred Thomas, Office of Engineering and Technology, (202) 653-8112.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 89-624

In the Matter of

Represcribing the
Authorized Rate of Return
for Interstate Services
of Local Exchange Carriers

ORDER

Adopted: May 25, 1990; Released: May 29, 1990

By the Chief, Common Carrier Bureau:

1. This order grants a motion filed by the Indiana Office of Utility Consumer Counselor and the Office of the Consumers' Counsel of Ohio (Indiana-Ohio) seeking additional time in which to respond to a discovery order in the captioned rate of return represcription proceeding.

2. On April 9, 1990, the Ameritech Operating Companies (Ameritech), pursuant to §65.103 of the Commission's Rules,[1] filed a request for discovery asking that Indiana-Ohio provide certain information and documents related to Indiana-Ohio's responsive rate of return submission. The Bureau granted the unopposed[2] discovery request on May 4, 1990. [3] Indiana-Ohio was required to provide the requested materials by May 21, 1990.[4]

3. On May 17, 1990, Indiana-Ohio filed a Verified Request for Extension of Time in Which to Respond to Discovery Request in which it asked the Commission to extend the due date for Indiana-Ohio's response to May 29, 1990. In support of its request, Indiana-Ohio states that its counsel was not aware either of Ameritech's discovery request or of the order granting discovery until May 14, 1990;[5] that the request contains eight questions, most of which are detailed and will require a significant time commitment to answer completely; that the expert witness who prepared Indiana-Ohio's responsive submission is not immediately available due to his involvement in hearings elsewhere; and that Indiana-Ohio will be unable to fully respond to Ameritech on time, despite due diligence. Indiana-Ohio states that its counsel has discussed this matter with counsel for Ameritech, and that counsel for Ameritech has indicated no opposition to the motion for extension.

4. It is the policy of the Commission that extensions of time shall not be routinely granted.[6] Nevertheless, since Ameritech does not object to the proposed extension, and since allowing Indiana-Ohio sufficient time to provide a full response will serve the purpose of building a complete record in this proceeding, we shall allow Indiana-Ohio the additional time it has requested.

5. Accordingly, IT IS ORDERED that the Verified Request for Extension of Time in Which to Respond to Discovery Request filed May 17, 1990 by the Indiana Office of Consumer Counselor and the Office of the Consumers' Counsel of Ohio IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Richard Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] 47 C.F.R. §65.103.

[2] Under §65.103(b), oppositions may be filed no later than 7 calendar days after requests for discovery are filed. 47 C.F.R. §65.103(b).

[3] Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, DA 90-646, 5 FCC Rcd (released May 4, 1990).

[4] Under §65.103(b), a response to a discovery request must be provided within 14 calendar days after the release of the Common Carrier Bureau decision granting the request. 47 C.F.R. §65.103(b). Counting those fourteen days in accordance with the Commission's rules for the computation of time, 47 C.F.R. §1.4, produces the May 21 due date. *See* 47 C.F.R. §1.4(b)(2), example 4.

[5] Indiana-Ohio attributes its lack of awareness of the discovery request to "an undetermined problem in the mailing and/or receiving of [the] request."

[6] 47 C.F.R. §1.46.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 90-132

In the Matter of

Competition in the
Interstate Interexchange Marketplace

ORDER

Adopted: May 31, 1990; Released: May 31, 1990

By the Chief, Common Carrier Bureau:

1. On May 17, 1990, the Competitive Telecommunications Association (CompTel) and thirteen of its member companies[1] filed a joint motion seeking a 45-day extension of the deadline for filing comments in response to the Notice of Proposed Rule Making (*Notice)* in this proceeding.[2] CompTel claims that the requested extension is necessary in light of the importance and complexity of the issues presented by the *Notice*. In addition, it states that a 45-day extension would enable it to coordinate with member companies and file one collective set of comments on behalf of these companies. CompTel claims that the extension is critical to its effective participation in this proceeding and that no party would be adversely affected by this extension.

2. AT&T opposes CompTel's request for extension. It disputes CompTel's claim that no party would be adversely affected by the extension, asserting that an extension would perpetuate the substantial and undue competitive disadvantage it now faces in the marketplace. In addition, it denies that the issues raised in the *Notice* are complex or new, noting that public information about this proceeding was available as early as November, 1989, and that the *Notice's* tentative conclusions were announced on March 8, 1990 -- thirty-five days before the comment cycle began running.

3. Although it is the policy of the Commission that extensions of time shall not be routinely granted, [3] we believe, in light of the importance of the issues presented in this proceeding, that the public interest would be served by affording CompTel some additional time in which to prepare its comments. At the same time, however, we believe that a forty-five day extension of time is neither necessary nor reasonable. The *Notice* already provides for a sixty-day comment period, which is longer than the comment period for most Commission proceedings. In addition, as AT&T notes, public information about this proceeding was available to CompTel several months before the *Notice* was released, and the basic outlines of the *Notice*, including our tentative conclusions, were announced with the adoption of the *Notice* thirty-five days prior to the running of the comment cycle. Under the circumstances, a fifteen-day extension of time would appropriately balance CompTel's need for additional time with the public interest in avoiding unnecessary and undue delay in the resolution of the important issues raised in this proceeding.

4. Accordingly, IT IS ORDERED, pursuant to sections 4(j) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154 (j) and 155 (c), and authority delegated thereunder pursuant to Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91 and 0.291, that the motion of CompTel for extension of time is GRANTED IN PART AND DENIED IN PART. The deadline for filing comments is extended to June 27, 1990. Replies must be filed by July 27, 1990.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] In this Order, we refer to CompTel and its member companies collectively as CompTel.

[2] *See* Competition in the Interstate Interexchange Marketplace, Notice of Proposed Rule Making, CC Docket No. 90-132, FCC 90-90, released April 13, 1990.

[3] *See* 47 C.F.R. §1.46(a).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Southwestern Bell Telephone Companies — Transmittal No. 1874

Petition for Waiver of Section 69.4(b) of the Commission's Rules

MEMORANDUM OPINION AND ORDER

Adopted: May 30, 1990; Released: May 31, 1990

By the Chief, Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. On October 12, 1989, Southwestern Bell Telephone Company (Southwestern) filed a petition for waiver of Section 69.4(b) of the Commission's Rules, which describes the access service elements established by the Commission, 47 C.F.R. § 69.4(b), in order to establish separate rate elements for operator services to its interexchange carrier (IC) access customers. Southwestern also seeks a waiver of Part 69 cost allocation requirements to allocate costs associated with operator call processing to the Information rate element.

2. Concurrent with its waiver petition, Southwestern filed Transmittal No. 1874 which would implement the requested new rate elements for Operator Call Processing ("OCP") services.[1] OCP would consist of two operator service rate elements -- one for O- interLATA, interexchange transfers and the other for inward assistance services.

A. O-Transfer Service

3. Southwestern proposes to transfer O- interLATA, interexchange traffic to any IC who has subscribed to OCP. This would alter Southwestern's current practice of defaulting O- interLATA traffic in Southwestern's territory to American Telephone and Telegraph Company (AT&T). Under OCP, Southwestern would instead direct these calls to the end user's preferred IC, if that IC is a subscriber of OCP. If the end user's preferred IC is not an OCP subscriber, Southwestern's operator will advise the end user to contact that carrier for assistance. If the end user does not have a particular preference for which IC transmits the call, the Southwestern operator will ask the end user if the call could be transferred to the first IC subscriber that appears on Southwestern's randomly-sequenced list of subscribers. If the end user does not wish to use that IC, Southwestern's operator will then offer the next IC on its customer list until the end user has selected an IC. Once an IC has been selected, Southwestern will transfer the end user's call to the selected IC's trunk. Southwestern Petition at 3-4.

4. In order to receive O- traffic from Southwestern, an IC must subscribe to the OCP transfer service and have a Feature Group D (FGD) trunk over which the transfer traffic can be routed from an Operator Service System tandem to the IC's point of termination. Subscribers to this service will be assessed existing FGD rates and, upon transfer of a O- call, a single flat rate of $0.30 in four of Southwestern's states and $0.355 in Kansas. *See* Southwestern Transmittal No. 1874, Section 21.1.6 (B)(1). The petition states that this flat rate will recover the costs for all direct operator work time and equipment associated with conducting the O-transfer service. Southwestern Petition at 6.

B. Inward Assistance: Call Interruption, Verification and Operator Assistance

5. Southwestern also seeks to establish rate elements for line status verification, call interruption, and operator assistance for inward calls (*i.e.*, those calls made by an IC to a Southwestern operator). Line status verification (LSV) is performed at a customer's request to determine whether a particular line is in use. Call interruption (CI) involves the verification of a busy line as well as the interruption of the call by the operator to inform one of the talking parties that another person wishes to contact them immediately.

6. Southwestern also seeks to establish a separate rate element for operator assistance (OA), which involves a Southwestern operator providing assistance to an IC operator (such as to provide the toll connecting code for a region). An IC customer's only requirement for obtaining inward assistance service is subscription to it. Subscribers will be assessed the flat rate of $0.75 for each attempted verification, $1.50 for each interruption, and $0.22 for operator assistance, in addition to being charged the local switching rate for FGD and a weighted average of local transport rates. *See* Southwestern Tr. No. 1874, Section 21.1.6(B)(2).

7. Two parties petitioned against Transmittal 1874 and four parties commented on Southwestern's petition.[2] Their arguments are summarized and the issues are discussed in the following sections.

II. SUFFICIENCY OF WAIVER REQUEST

8. NYCOM/AMNEX argues that Southwestern's waiver petition is procedurally deficient because it makes "no effort" to show good cause for waiver of the Commission's rules. NYCOM/AMNEX Comments at 8. USLD argues that Southwestern's petition should not be granted because Southwestern has failed to provide any evidence that would warrant approval of a waiver. USLD Comments at 7. *See also* Capital Petition at 8; ITI Opposition at 31-32.

9. Rules may be waived if there is "good cause" to do so. *See* Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3. Good cause exists if application of the rules to particular facts produces results that were not anticipated when the rule was adopted, those results impose an undue hardship upon particular persons, and a decision to grant the waivers does not conflict with the purposes and policies of the relevant rules. [3] The access charge rules established a set of prescribed access elements for access services that local exchange carriers (LECs) would be likely to provide at the time of divestiture in order to further the goals of the *Access Charge Decision*.[4] The Part

69 Rules initially included an "Operator Assistance Element" for the "direct assistance" of the LEC operator in the completion of interexchange calls. The Commission later eliminated this element because, upon divestiture, operator call processing systems would be assigned to AT&T and there would "no longer [be] a need to include operator assistance services among access functions." The investment and expense previously assigned to the operator element were to be allocated to the Interexchange category.[5]

10. The operator services that Southwestern describes in the petition are not related to any interexchange services that Southwestern provides. Therefore, recovery of these costs through an access rate element that is assessed to ICs would be more consistent with the access scheme than recovery of such costs through any Interexchange category services Southwestern may have. Indeed, the access charge rules would have required Southwestern to recover such costs through access elements if the record in the access charge proceeding had not indicated that such access elements would be superfluous because LECs would not be providing such services. In these circumstances, good cause exists to permit Southwestern to establish an access element or elements to recover the cost of operator services for ICs that the current rules assign to the Interexchange category.

11. Southwestern has failed to demonstrate good cause for reallocating costs of any operator services described in this petition to the Information element. The Information element captures costs associated with directory assistance provided by operators. The Commission created a separate element to facilitate recovery of those costs from users of directory assistance. *See Access Charge Decision*, 93 FCC 2d at 308. The addition of operator service costs or revenues to the Information element that are not related to directory assistance would tend to frustrate that purpose. Therefore, we will deny the petition insofar as Southwestern seeks permission to reallocate any costs or revenues to the Information element.

III. RATE COMPUTATION

12. A finding that good cause exists to establish a separate access element that is not described in Section 69.4(b) of the Commission Rules does not, of course, justify any charge a carrier may choose to adopt for such an element. A carrier who wishes to establish such an element through a waiver of the current Part 69 rules should demonstrate that it will establish a rate that reflects, or at least reasonably approximates, relevant costs.

13. AT&T, Capital, and NYCOM/AMNEX argue that the Transmittal 1874 rates for O- transfer and for inward assistance services are unlawful because they are not cost-based and such a departure from costs has not been justified as required by the Commission. *See* AT&T Petition at 6; Capital Petition at 13; NYCOM/AMNEX at 17-19. AT&T claims that Southwestern's O- transfer services are, in some instances, priced significantly above cost. AT&T continues that Southwestern's attempt to establish "market-based" rates is unwarranted because there is not any competitive alternative available to ICs. AT&T Petition at 7 n ***.

14. Southwestern has provided sufficient information to enable us to conclude that the methods Southwestern used to derive the initial charges for O- transfer and inward assistance services are not likely to result in excessive rates. Accordingly, we will not deny those waiver requests for failure to develop adequate ratemaking methods for the new elements Southwestern seeks to establish.

IV. DESIRABILITY OF O- TRANSFER SERVICE

15. Some petitioners contend that the request to establish a separate rate element for O- transfer service should be denied in order to prevent Southwestern from offering such a service. These petitioners contend that LEC offering of O- transfer services will produce undesirable consequences.

A. Pleadings

16. NYCOM/AMNEX argues that OCP would render payphone presubscription meaningless because O- transfer service would allow the end user to override a premises owner's chosen carrier. To recapture that traffic, argues NYCOM/AMNEX, the carrier will have to subscribe to OCP to receive a call it should have received anyway. NYCOM/AMNEX Comments at 6-7. *See also* Joint Comments at 12-13. Several parties argue that the concept of presubscription should be applied comprehensively to foster interexchange competition for all operator traffic rather than limiting its application to 1+ and O+ traffic. NYCOM/AMNEX Comments at 14; Capital Petition at 6. Capital argues that if O- transfer services are permitted, a NYNEX-type transfer service should be implemented whereby calls are transferred to the IC presubscribed to the telephone line used to place the call.[6] Capital Petition at 8. *See also* NYCOM/AMNEX Comments at 14.

17. AT&T states that Southwestern's plan may not comply with the Commission's *Allocation Order* [7] because Southwestern would direct the end user to a randomly-selected IC rather than assign the end user's call to an IC in proportion to the IC choices made by presubscribed customers. AT&T Petition at 3. A number of parties also challenge Southwestern's plan as contrary to an October 14, 1988 Order from the U.S. District Court in the Bell System divestiture proceeding regarding presubscription. *See, e.g.*, ITI Opposition at 15.

18. Southwestern's method of informing callers as to which ICs accept O- transfers is opposed by most of the commenters.[8] AT&T criticizes Southwestern's naming of IC customers one-by-one because it fails to inform consumers of their options before beginning the selection process. AT&T Petition at 3-4. *See also* USLD Comments at 4 & n.4; Capital Petition at 4. AT&T suggests that either of the methods used by NYNEX or Bell Atlantic to transfer calls is preferable to Southwestern's method. AT&T Petition at 4-5. Capital also argues that Bell Atlantic's service is preferable to Southwestern's plan because Bell Atlantic operators first advise end users to dial their preferred IC directly and then, if the caller insists that Bell Atlantic conduct the transfer, Bell Atlantic asks the customer to select an IC. Captial Petition at 11 n.12.

19. Metromedia criticizes Southwestern's unwillingness to discourage end users from relying on O- to obtain operator assistance for interexchange calls, suggesting that O- dialing reflects pre-divestiture dialing habits of end users. Metromedia Comments at 2-4. Metromedia urges that a decision to grant Southwestern's petition should be conditioned on Southwestern's making a good faith effort to discourage the use of O- calls and that such services should be subject to a maximum time period of 12 to 18

months. *Id.* at 5. USLD objects to the minimal instruction that will be provided by Southwestern to an end user who desires to reach a non-subscribing IC. USLD adds that the end user would have probably dialed the preferred IC's access code originally if the end user knew it, rather than dialing O-. USLD Comments at 4 n.3.

20. Joint Commenters claim that if operator service providers are obliged to use a two-tiered O- and O+ marketing approach for operator services, carrier competition will be harmed as small carriers have just completed extensive marketing to premises owners for IC selection of payphones. Joint Comments at 11. They add that the proper role for Southwestern is to encourage callers to use proper codes and access numbers, not to promote end user choice. *Id.* at 13.

21. In USLD's view, the competitive benefits of O- transfer services as promoted by Southwestern are "illusory" because competition is fostered by presubscription, not from the promotion of Southwestern's service. USLD argues that approval of Southwestern's waiver will increase consumer confusion and will encourage other local exchange carriers to file such offerings. USLD Comments at 9, 11. *See also* ITI Opposition at 3. Capital suggests that a NYNEX-type transfer system is preferable because it would eliminate default to AT&T while not disturbing the premises owner's presubscribed choice. Capital Petition at 8.

22. Most commenters argue that the Commission should institute a Rule Making regarding O- traffic, in general, and the Southwestern petition, in particular, because the procedures for O- transfers jeopardize presubscription, unfairly complicate IC business planning, and create serious policy implications that should be fully considered rather than accomplished by waiver. *See* ITI Opposition at 14; Capital Petition at 10; NYCOM/AMNEX Comments at 9-10. In USLD's opinion, a grant of Southwestern's petition will have the equivalent effect of an expedited Rule Making as it will encourage LECs to make similar waiver requests. USLD Comments at 11. *See also* ITI Opposition at 13; Joint Comments at 14-16.

23. NYCOM/AMNEX contends that a Rule Making is essential because the potential impact of Southwestern's service is even more compelling than the decision with respect to Bell Atlantic's Call Set Up Charge in which the Bureau concluded that the waiver process was not appropriate "given the significant industry implications." NYCOM/AMNEX Comments at 10, citing Bell Atlantic Transmittal No. 310, Order, 4 FCC Rcd 7210 (Com.Car.Bur. 1989). The impact, commenters argue, would be significant. Joint Commenters contend that Southwestern's plan represents a "technological step backwards" and a reduction in network efficiency because O- dialing requires two operators. Joint Comments at 12. Consumer costs will also rise, states Capital, as ICs pass on these transfer cost to their end users. Capital Reply at 4. *See also* NYCOM/AMNEX Comments at 12. Capital emphasizes that these services could have as much as a 43 percent adverse impact on its business. Capital Reply at 3. USLD argues that the requirements for participating in Southwestern's O- transfer service are "quite onerous" because, for example, an IC may need to reconfigure its network or purchase switched access FGC or FGD trunks to transport the traffic from Southwestern's Operator Service System tandem to the IC's POP. USLD Comments at 3 n.2.

B. Discussion

24. Southwestern is not seeking a waiver in order to establish a O- transfer service. Southwestern apparently has been transferring O- calls to AT&T for years. Southwestern is seeking a waiver of access charge rules in order to establish a rate for the service AT&T is already receiving at no charge and to implement a plan to make such a service available to other ICs as well.

25. A decision to deny the waiver request might, of course, cause Southwestern to stop providing such a service to anyone. Such a result would not further any goal of the access charge rules. The *Access Charge Decision* does not suggest that the Commission established access elements in order to subject future access services to pre-screening in order to determine whether a particular offering would be desirable. In these circumstances, commenters who urge us to deny the waiver request in order to prevent or discourage Southwestern from providing this service, must demonstrate that O- transfer services will produce results that violate requirements or goals of the Communications Act or some established Commission rule or policy. No commenter has done so.

26. O- transfer services appear to be beneficial to consumers. For example, some consumers will undoubtedly appreciate the ease of dialing merely O-. Secondly, O- transfer services are merely providing an alternate way for the end user to reach the IC of his choice -- a choice the end user should already have by using an access code or dialing an 800 or 950 number. The provision of O- transfer service does not violate the Commission's presubscription order.[9] That decision related to 1+ presubscription and did not prescribe or prohibit procedures for other types of calls. Furthermore, O- transfer services, such as OCP, prevent the continued default of these calls to AT&T, a practice we believe is anticompetitive. The participation of even one IC, other than AT&T, in Southwestern's transfer service, would extinguish AT&T's monopoly in this territory.

27. We note claims that a Rule Making would be desirable. Our decision to grant this waiver does not in any way foreclose a Commission decision to initiate a Rule Making to prohibit or prescribe particular methods or procedures for enabling end users to use IC services. We merely conclude that a O- transfer service does not conflict with any existing Commission requirements on that subject.

28. Our decision to grant this waiver is not a determination that the precise procedures Southwestern plans to use to inform callers of the options that are available to them are optimal or that such practices are reasonable. We do not construe the petition for waiver as a request for declaratory ruling with respect to the legality of all of the practices Southwestern has described. Moreover, it would not be appropriate for us to entertain such a request at this time. The Commission may decide to address related questions in the future.

29. The Common Carrier Bureau has reviewed Southwestern's Transmittal No. 1874, the petitioners' assertions, and related pleadings. We conclude that no compelling argument has been presented that the tariff is so patently unlawful as to require rejection, and that an investigation is not warranted at this time.

V. ORDERING CLAUSES

30. Accordingly, IT IS ORDERED that the petition for waiver filed by Southwestern Bell Telephone Company IS GRANTED, to the extent provided herein.

31. IT IS FURTHER ORDERED that the petitions filed against Southwestern Bell Telephone Company, Tariff F.C.C. No. 68, Transmittal No. 1874 by American Telephone and Telegraph Company and Capital Network System Inc. ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] Southwestern Petition for Waiver, filed Oct. 12, 1989 and Southwestern Tariff F.C.C. No. 68, Transmittal No. 1874, filed Oct. 12, 1989.

[2] Public Notice, Southwestern Bell Files Petition for Waiver Regarding Access Service Offering, 4 FCC Rcd 7787 (1989). On November 7, 1989, a petition to suspend and investigate Transmittal 1874 was filed by American Telephone and Telegraph Company (AT&T Petition); Capital Network System, Inc., filed a petition to reject or in the alternative suspend and investigate (Capital Petition). On the same day, comments in opposition to Southwestern's waiver petition were filed by International Telecharge Inc. (ITI Opposition), U.S. Long Distance, Inc. (USLD Comments), and Metromedia Long Distance, Inc. (Metromedia Comments). Consolidated comments were filed by NYCOM Information Services, Inc., and American Network Exchange, Inc. (NYCOM/AMNEX Comments); joint comments were filed by the Operator Service Providers of America, Operator Assistance Network, and Telesphere International, Inc. (Joint Comments). Additionally, Capital and Southwestern filed replies to these comments on November 15, 1989 (Capital Reply)(Southwestern Reply).

[3] *See* WAIT Radio v. FCC, 418 F. 2d 1153 (D.C. Cir. 1969). *See also* Northeast Cellular Telephone Company, L.P. v. FCC, 897 F. 2d 1164 (1990).

[4] MTS and WATS Market Structure, Third Report and Order, CC Docket No. 78-72, Phase 1, 93 FCC 2d 241, 308-309 (1983) (*Access Charge Decision*).

[5] MTS and WATS Market Structure, Memorandum Opinion and Order, CC Docket No. 78-72, Phase 1, 97 FCC 2d 682, 738, 748 (1983).

[6] NYNEX's O- transfer service transfers only those interexchange calls that are made from presubscribed lines. With the aid of certain software, the NYNEX operator can determine the carrier (IC or OSP) assigned to a presubscribed line and transfer the call consistent with the premises owner's prior selection. New York Telephone Company, Transmittal Nos. 919 and 960, New England Telephone Company, Transmittal No. 934, Order, 4 FCC Rcd 1391 (1989). Bell Atlantic also provides a O- transfer service. Its procedure, however, is to transfer all O- interLATA traffic regardless of a line's presubscription and only if the end user insists that Bell Atlantic transfer the call rather than dialing it himself. Once the end user has chosen an IC from a list first read by the Bell Atlantic operator, the call is then transferred. Unlike NYNEX, Bell Atlantic is not technically able to identify the presubscribed carrier on a line. Bell Atlantic Telephone Companies, Petition for Waiver of Section 69.4(b) of the Commission's Rules, Transmittal No. 262, Order, 4 FCC Rcd 455 (1988). Southwestern has indicated that it does not have the technical ability to identify presubscribed lines.

[7] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase 1, 101 FCC 2d 911 (1985) (*Allocation Order); recon. denied*, 102 FCC 2d 503 (*Reconsideration Order);* Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase 1, 101 FCC 2d 935 (1985)(Waiver Order).

[8] ITI also filed a pleading with the Commission relating to the handling of O- calls by Southwestern operators in Texas. Motion of International Telecharge, Inc. for Leave To File a Supplement to Its Opposition to Tariff and Petition for Waiver, filed Feb. 27, 1990. Southwestern opposed the ITI pleading. Opposition of Southwestern Bell Telephone Company to ITI's Motion for Leave To File a Supplement to Its Opposition to Tariff and Petition for Waiver, filed Mar. 14, 1990. On March 29, 1990, ITI filed a motion to accept a late-filed reply to Southwestern's opposition. Motion of International Telecharge, Inc. for Leave To File Late-Filed Pleading, filed Mar. 29, 1990. ITI's motions are denied and its pleadings are dismissed because the pleadings violate the Commission's rules of procedure.

[9] *See Allocation Order,* 101 FCC 2d 911 (1985).

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: June 4, 1990

COMMISSION ESTABLISHES PLEADING CYCLE REGARDING AMERITECH TARIFF TRANSMITTAL NO. 425

Pleading Cycle Established

On February 16, 1990, the Ameritech Operating Companies (Ameritech) filed a petition for waiver of Part 69 of the Commission's Rules to permit the establishment of a new rate subelement and a reallocation of the associated costs and investment from the Interexchange category to the Information element, for the provision of Operator Transfer Service (OTS). On February 23, 1990, the Commission released a Public Notice requesting comment on Ameritech's petition. The notice stated that a pleading cycle with respect to the tariff would be established by a subsequent Public Notice. This notice establishes the pleading cycle for Ameritech Transmittal No. 425.

Interested parties may file petitions to reject or to suspend and investigate Ameritech's Transmittal 425 no later than **June 19, 1990.** Ameritech may file a reply no later than **June 26, 1990.**

An original and four copies of all petitions and replies must be filed, in accordance with Section 1.51(c) of the Commission's Rules. In addition, one copy of each pleading must be filed with International Transcription Service, Inc. (ITS), the Commission's duplicating contractor, at its office in Room 246, 1919 M Street, N.W., Washington, D.C. 20554, and one copy with the Chief, Tariff Division, Room 518, 1919 M Street, N.W., Washington, D.C. 20554.

Copies of the Ameritech Operating Companies' waiver petition, Ameritech Transmittal No. 425, and other related documents, may be obtained from ITS. The documents are also available for public inspection and copying in Room 518, 1919 M Street, N.W.

For further information, contact Tracy Bridgham, Tariff Division, Common Carrier Bureau at (202) 632-6917.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: June 4, 1990

US WEST COMMUNICATIONS FILES PETITION FOR WAIVER REGARDING ELECTRONIC WHITE PAGES AND DIRECTORY ASSISTANCE ACCESS SERVICES

Pleading Cycle Established

On May 18, 1990, the Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company and Pacific Northwest Bell Telephone Company (US West), filed a petition for waiver of Part 69.4(b) of the Commission's Rules to establish a new switched access rate element for its proposed Electronic White Pages (EWP) service. This service would permit US West customers to access electronic directory listings without operator interaction or reference to printed white pages.

Interested parties should file comments regarding the US West waiver petition no later than **June 29, 1990.** Reply comments should be filed no later than **July 16, 1990.**

An original and four copies of all comments and replies must be filed with the Secretary of the Commission in accordance with Section 1.51(c) of the Commission's Rules. Parties must also furnish one copy of their comments and replies to International Transcription Service, Inc. (ITS), the Commission's duplicating contractor, at its office in Room 246, 1919 M Street, N.W., Washington, D.C. 20554, and one copy to the Chief, Tariff Division, Room 518, 1919 M Street, N.W., Washington, D.C. 20554.

Copies of US West's waiver petition, along with other related documents, may be obtained from ITS. The documents are also available for public inspection and copying in Room 518, 1919 M Street, N.W.

For further information, contact Terry S. Conway, Tariff Division, Common Carrier Bureau at (202) 632-6917.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

SATELLITE TRANSMISSION SYSTEMS, INC. — File No. CSG-90-013-ML

Application for authority to modify and operate an international 14/11 GHz transmit/receive earth station at Thurmont, Maryland, for the provision of INTELSAT Business Service.

ORDER AND AUTHORIZATION

Adopted: June 1, 1990; Released: June 11, 1990

By the Chief, International Facilities Division:

1. The above-captioned application, filed on November 17, 1989, by Satellite Transmission Systems, Inc. (STS) requests authority pursuant to Title III of the Communications Act of 1934, as amended, and Sections 201(c)(4), (c)(6) and (c)(7) of the Communications Satellite Act of 1962, as amended, to modify domestic facilities authorized under Call Sign E900045, File No. 263-DSE-P/L-90 to also operate as an international earth station facilities at Thurmont, Maryland, for the provision of INTELSAT Business Service (IBS). The application was placed on public notice on January 10, 1990. No comments were received.

2. The proposed earth station will consist of a 4.57-meter antenna which shall meet INTELSAT Revised Standard E-1 technical parameters and communicate with an appropriate INTELSAT satellite in the Atlantic Ocean Region (AOR) operating in the transmitting frequency band 14.0-14.5 GHz and the receiving frequency bands 10.95-11.2 GHz and 11.45-11.7 GHz. The earth station will be constructed on customer premises at Thurmont, Maryland, and will be used to provide IBS service in support of the White House Communications Agency.

3. STS's legal, financial and technical qualifications to construct and operate the proposed earth station are established. STS has completed the necessary frequency coordination. The scope of operation of the proposed earth station will be the same as that permitted by the Commission in previous IBS/television authorizations.[1] We will limit the authorization to the provision of IBS and related digital video services. To the extent that the applicant may seek to provide certain newly proposed INTELSAT services which fall within the IBS/television service category, we will not restrict operation of the proposed station. However, it may not provide any service which falls outside the IBS/television service category. Any use of the proposed station as a multipurpose earth station would require a separate application for the additional authority.

4. Upon consideration of the application, we find that authorization of the requested earth station facilities to provide IBS and related digital video services would serve the public interest.

5. Accordingly, IT IS ORDERED pursuant to Sections 304, 309 and 319 of the Communications Act of 1934, as amended, and Section 201(c) of the Communications Satellite Act of 1962, as amended, that the application of STS, File No. CSG-90-013-ML, is GRANTED, and STS is authorized to modify domestic facilities authorized under Call Sign E900045 and operate the proposed 4.57-meter Ku-band earth station at Thurmont, Maryland, to provide IBS and related digital video services.[2] Before completion of equipment installation and facility activation, however, the applicant shall provide the Commission with a summary of equipment which was actually installed.

6. This order is issued under Section 0.291 of the Commission's Rules and Regulations and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International
Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] Upon grant of an IBS/television service application, the applicant will be issued a combined Radio Station Construction Permit and License (FCC Form 456-P). While the Commission will limit the use of the authorized facilities to the provision of IBS, carriers may seek additional authorization if they desire to use these facilities as multipurpose earth stations.

[2] This authorization is not to be construed as permitting the provision of IBS between earth stations located within the United States.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

Mobile Phone of Texas, Inc. File No. 21968-CD-P/L-85

For authority to construct additional facilities in the Public Land Mobile Service on Frequency 152.09 MHz for Station KLF 902 at Palo Pinto, Texas

MCI Airsignal, Inc. File No. 20777-CD-P/L-B-1-85

For authority to construct additional facilities in the Public Land Mobile Service on Frequency 152.15 MHz for Station KKG 411 at Weatherford, Texas

MEMORANDUM OPINION AND ORDER

Adopted: June 4, 1990; Released: June 12, 1990

By the Chief, Common Carrier Bureau:

I. BACKGROUND

1. Before the Bureau are two Petitions for Reconsideration filed by Mobile Phone of Texas (Mobile Phone). The first Petition requests reconsideration of the decision of the Mobile Services Division (MSD) to return Mobile Phone's captioned application. The second Petition requests rescission of the grant of the captioned application of MCI Airsignal, Inc., (MCI) pending action on the first petition.

2. MCI's captioned application for frequency 152.15 MHz for Weatherford, Texas was listed as accepted for filing in *Public Notice*, Report No. PMS-84-254 (released December 19, 1984), and listed on *Public Notice*, Report No. PMS-85-23 (released June 26, 1985), as being mutually exclusive with an application filed by Communication Sales and Service, Inc., (CSSI), File No. 21978-CD-P/L-1-85, at Bridgeport, Texas. Mobile Phone's captioned application for Palo Pinto, Texas, filed February 15, 1985, was accepted for filing in *Public Notice*, Report No. PMS-85-10 (released March 27, 1985) and listed as applying for frequency 152.09 MHz. On September 30, 1985, MCI amended its application to eliminate interference with CSSI's proposal.

3. While Mobile Phone's application stated in its cover letter as well as in Item 7 (a) of the FCC Form 401 that it proposed to use frequency 152.09 MHz, the engineering exhibits associated with the application generally indicated that the frequency requested was 152.15 MHz. On July 15, 1985, Mobile Phone's counsel sent to the MSD a letter on behalf of Mobile Phone stating that its application was being corrected "at Item 7 (a) to show the frequency as 152.15 MHz, consistent with the engineering report . . . ." By *Public Notice*, Report No. PMS-85-29 (released August 7, 1985), the Mobile Phone application was listed as amended by major amendment to change frequency from 152.09 MHz to 152.15 MHz. The MSD specifically informed Mobile Phone by letter dated September 9, 1985, that Item 7 (a) of Mobile Phone's application (Form 401) and the cover letter to it had specified frequency 152.09 MHz, and that, therefore, the July 15, 1985 letter was a major amendment. The MSD determined that the Mobile Phone application would therefore be considered newly filed pursuant to Section 22.31. Since this newly filed application would cause electrical interference to MCI's previously filed Weatherford application, and was not filed within the 60-day cut-off period provided by Section 22.31 (b) (2) of the rules,[1] the MSD returned the application without prejudice pursuant to Section 22.31 (d).[2]

4. On October 7, 1985, Mobile Phone filed a petition for reconsideration of the MSD's action, seeking reinstatement of its captioned application. Together with this petition, Mobile Phone filed an amendment, signed by one of its officers, which amended the frequency applied for in its application from 152.09 MHz to 152.15 MHz. On November 6, 1985, the MSD granted the MCI Weatherford application by *Public Notice*, PMS-86-6-A. Mobile Phone then filed its second Petition for Reconsideration, requesting rescission of this grant pending resolution of its October 7, 1985 reconsideration petition. Subsequently, MCI assigned its license for Station KKG 411, including the Weatherford location, to Mobilecomm of Texas, Inc. (Mobilecomm), [3] who now holds the authorization for the Weatherford facility.[4]

II. REINSTATEMENT AND AMENDMENT OF MOBILE PHONE'S APPLICATION

A. Contentions of the Parties

5. In its petition for reconsideration, filed October 7, 1985, Mobile Phone contends that the MSD erroneously returned its application and that it should be reinstated. Mobile Phone contends that the classification by the August 7, 1985 *Public Notice* of its July 15, 1985 letter as a major amendment and the MSD's treatment and return of its application are in error. Mobile Phone asserts that it did not intend its letter to be an amendment to change its frequency. Rather, Mobile Phone asserts that it filed the letter to clarify ambiguous information in its timely filed application. In any case, argues Mobile Phone, the letter was not an amendment in the legal sense because it was not signed by the applicant as required by Sections 1.743 (a), 22.6 (d), and 22.23 (f) of the Commission's rules;[5] and therefore, was unacceptable for filing as an amendment. According to Mobile Phone, *Larry D. Swartz*, 50 Rad. Reg. 2d (P & F) 1318, 1319 (Com. Car. Bur. 1982) (*Swartz*) mandates that the July 15, 1985 letter had no effect and that the Commission was powerless to act on it.[6] Therefore, contends Mobile Phone, at the least, its application should remain pending for 152.09 MHz.[7]

6. Mobile Phone also asserts that, in any event, its October 7, 1985 amendment, filed with its petition for reconsideration, properly amended its application to correct all erroneous references to 152.09 MHz.[8] Mobile Phone requests that the amendment be exempted from treatment as a major amendment under Section 22.23

(g)(5) of the rules.[9] Mobile Phone says that an inadvertent clerical mistake clearly exists in the application, either in listing the frequency 152.09 MHz in Item 7 (a) of Form 401, Exhibit 2, and the cover letter, or in specifying 152.15 MHz in the engineering exhibits and interference study. Mobile Phone asserts that it is more plausible to believe that the 152.09 MHz is in error than to believe that an engineering report and interference study for 152.15 MHz were prepared for an application requesting 152.09 MHz. In addition, Mobile Phone argues that the amendment would not create new or increased frequency conflicts, since a conflict has always existed between its own application and the Mobilecomm application. Finally, Mobile Phone argues that even if its October 7, 1985 amendment is considered to be a major amendment, a waiver of the cut-off rules is justified. *See* para. 11, *infra*.

7. In opposition, Mobilecomm submits that if the July 15, 1985 letter has no legal effect because it does not comply with the rules, then Mobile Phone's application should be dismissed as defective pursuant to Section 22.26 (b) since it was internally inconsistent.[10] Moreover, Mobilecomm argues, the MSD's August 7, 1985 *Public Notice* informed Mobile Phone that its July 15, 1985 letter was being treated as a major amendment and Mobile Phone had 30 days from August 7, 1985 to contest the *Public Notice*. By failing to take corrective action until October 7, 1985, when it filed its Petition for Reconsideration, Mobilecomm submits that Mobile Phone has waived its rights to object.[11]

B. Discussion

8. After reviewing the facts and pleadings in this case, we concur with the MSD that Mobile Phone's application should be dismissed. Regardless of whether the July 15, 1985 letter was effective as an amendment, because it was not signed by the applicant, we conclude that Mobile Phone's October 7, 1985 amendment was a major amendment which does not qualify for Section 22.23(g)(5) treatment to avoid application of the cut-off rules. The thrust of Mobile Phone's argument is that application of the cut-off rules to it is unfair since its designation of frequency 152.09 was a clerical error. The cut-off rules have always been strictly construed in order to provide certainty to applicants as to which applications are entitled to receive comparative consideration. This certainty is important to speed service to the public and to ensure that applications cannot be amended at a late date to create additional mutually exclusive situations. Acknowledging that the cut-off rules are sometimes harsh, the Commission adopted several limited exemptions to the cut-off rules, Section 22.23(g). Section 22.23(g)(5) is one such limited exemption to permit the correction of clerical errors which are clear on the face of the application as long as the amendment does not create new frequency conflicts. This exemption does not apply to Mobile Phone's amendment because its amendment created a new conflict with Mobilecomm's application that was not apparent at the time Mobile Phone filed its application.[12] To permit such an amendment would be unfair to Mobilecomm which was entitled to the certainty afforded by the cut-off rules.

9. We also reject Mobile Phone's argument that the Commission should have known that it sought frequency 152.15 MHz and not 152.09 MHz. The fact that Mobile Phone was applying for frequency 152.15 MHz was not readily apparent from its application as originally filed. Not only were the cover letter and item 7(a) of the Form 401 inconsistent with the engineering exhibits, but also the engineering exhibits themselves were internally inconsistent. The engineering exhibits referred generally to frequency 152.15 MHz, but at Exhibit 2, specifically stated that the proposed facility would operate on frequency 152.09 MHz. Only Mobile Phone's October 7, 1985 amendment[13] made it clear that it was applying for frequency 152.15 MHz. We therefore conclude that Mobile Phone's October 7, 1985 amendment was a major amendment which was cut-off from further comparative consideration with Mobilecomm's application.[14]

III. WAIVER REQUEST OF 22. 31 (D)

A. Contentions of the Parties

10. Finally, Mobile Phone argues even if its October 7, 1985 amendment is deemed to be a major amendment, a waiver of the cut-off rules is warranted pursuant to Section 22.19 (a)(1)(ii) of the rules. Mobile Phone argues that strict application of the cut-off rule would be inequitable, since it only corrected inadvertent typographical/clerical errors and no delay or interference in processing will occur. Mobile Phone contends that the rationale of *Moore's Service*, 86 FCC 2d 787, 795-96 (Com. Car. Bur. 1981), to give a tardily amended application comparative consideration where it does not compromise processing procedures and the public interest is served thereby, justifies a waiver here.[15]

11. Mobilecomm replies that Section 22.19 (a)(1)(ii) requires that Mobile Phone must show that no reasonable alternative other than requesting a waiver was available to the applicant. Mobilecomm submits that Mobile Phone had an alternative to bring its application into compliance with the rules prior to the return of its application but chose not to act. Mobilecomm argues that the equities of the circumstances mandate denial of Mobile Phone's petition because granting the waiver will create a new frequency conflict with Mobilecomm's application, which had been properly on file and amended to eliminate any known frequency conflict.

B. Discussion

12. Section 22.19 (a)(1)(ii) provides that waivers will be granted upon a showing "[t]hat the unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest." Thus, applicants must demonstrate the existence of extraordinary or special circumstances justifying the waiver. *See WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).[16] Mobile Phone has not presented any unique circumstances that would justify a waiver. Contrary to Mobile Phone's contention, waiving the cut-off rules would compromise our processing procedures. It would also frustrate our attempt to speed service to the public. Had we accepted this amendment as timely filed, it would have been necessary to issue a new public notice announcing that Mobile Phone was requesting frequency 152.15 MHz. This in turn would have created a frequency conflict with Mobilecomm's application, which was accepted for filing nearly ten months before, and resulted in further processing delays. It was precisely this sort of delay that Section 22.31 was designed to prevent.

Thus, granting a waiver of Section 22.31 would specifically undermine the policy underlying the rule, and we decline to do so.[17]

IV. PETITION FOR RECONSIDERATION OF GRANT OF MOBILECOMM'S APPLICATION

13. In the second petition for reconsideration, Mobile Phone submits that the MSD's grant of the Mobilecomm, Weatherford application for 152.15 MHz, *see* para. 4, *supra*, will prejudice consideration of the petition requesting reinstatement of Mobile Phone's application. Mobile Phone asserts that this grant and the subsequent expenditure of resources may exert a subtle influence on the Bureau to deny reinstatement and that it will be denied meaningful review if the grant is not rescinded.[18]

14. The determination herein rejecting reinstatement of Mobile Phone's application or treatment of its October 7, 1985 amendment as a minor amendment renders the second petition, which requests rescission of the grant to Mobilecomm pending action on the first petition, moot. Mobilecomm was granted the authorization knowing that there was pending reconsideration of the return of Mobile Phone's application. Our holding herein was based on our rules and was in no way based on mere grant of Mobilecomm's application.

V. ORDERING PARAGRAPHS

15. Accordingly, for the foregoing reasons, IT IS ORDERED that the Petition for Reconsideration, filed October 7, 1985, by Mobile Phone of Texas, Inc. is DENIED.

16. IT IS FURTHER ORDERED that the Petition for Reconsideration, filed December 6, 1985, by Mobile Phone of Texas, Inc. IS DISMISSED AS MOOT.

17. IT IS FURTHER ORDERED that the application of Mobile Phone of Texas, Inc., File No. 21968-CD-P/L-85, IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] Section 22.31 (b)(2) provides *inter alia* that an application is entitled to comparative consideration with a conflicting application if it is received in a condition acceptable for filing by a "cut-off" date 60 days after the date of the public notice listing the first of the conflicting applications as accepted for filing.

[2] Section 22.31 (d) provides that "[a]n application otherwise mutually exclusive with one or more previously filed applications, but filed after the appropriate date prescribed in paragraph (b)(2) of this section, will be returned without prejudice...."

[3] The application for assignment of license for MCI Airsignal's Station KKG411 to Mobilecomm of Texas, Inc. (Mobilecomm) was granted by Public Notice, PMS-87-13-A (released December 24, 1986).

[4] MCI's captioned application is referred to henceforth in this item as the "Mobilecomm" application.

[5] Section 1.743 (a) requires that amendments shall be personally signed by the applicant, or by an officer or duly authorized employee if the applicant is a corporation. Section 22.6, applicable to Public Mobile Radio applications, specifies that "[e]xcept as otherwise specified, all applications, amendments and correspondence . . . shall be signed as prescribed by Section 1.743." Section 22.23 (f) provides that "[a]ny amendment . . . shall be signed . . . as was the original application" and that "[a]mendments may be in letter form if they comply in all other respects with the requirements of this chapter."

[6] In *Swartz*, *supra*, an individual applicant filed two amendments that it did not personally sign purporting to change its frequency. Notice of the amendments appeared on two Public Notices. The Bureau held that the amendments should have been returned as unacceptable for filing and that the notices were in error.

[7] This argument is moot because Mobile Phone filed an amendment on October 7, 1985 to change its frequency to 152.15 MHz.

[8] Mobile Phone submitted an amendment signed by an officer of Mobile Phone to correct (1) Item 7 (a) of Form 401 to frequency 152.15 MHz, and (2) Item 27 (c) to show the proposed facility would communicate with mobile units on other frequencies. The amendment also corrected Form 401 Schedule B page 2, and Exhibit 2 to the application to reflect the above changes.

[9] Section 22.23 (g) states that an application is considered newly filed if amended by major amendment (*e.g.*, a frequency change), except in several circumstances, one of which is provided by Section 22.23 (g)(5); namely, where the amendment corrects typographical transcription, or similar clerical errors which are clearly demonstrated to be mistakes by reference to other parts of the application, and whose discovery does not create new or increased frequency conflicts.

[10] Section 22.26 (b) of the rules provides that acceptance of an application for filing means that it has been the subject of a preliminary review as to completeness and that such acceptance will not preclude the subsequent return or dismissal of the application if it is found to be defective or not in accordance with the Commission's rules.

[11] In support, Mobilecomm cites Shoblom Broadcasting, Inc., 95 FCC 2d 444, 446 (Rev. Bd. 1983), *review denied*, FCC 84-119 (1984), *aff'd by judgment sub nom.* Royce International Broadcasting Co. v. FCC, 762 F. 2d 138 (D.C. Cir.), *cert. denied*, 474 U.S. 995 (1985). In that case, an applicant had waited to respond to a motion to dismiss its application until after the administrative law judge acted. The Review Board stated that procedural "rights" that are not exercised are deemed waived.

[12] We reject as circular in nature Mobile Phone's argument that its amendment did not create a new frequency conflict because a conflict "always" existed with respect to the Mobilecomm application. The conflict only exists if we grant the amendment Section 22.23 (g)(5) status.

[13] The Commission must rely on the applicant's designation of frequency on the Form 401. It is the applicant's continuing duty to maintain the accuracy of its application. Section 1.65 of the rules provides a mechanism for amending the application to correct mistakes.

[14] We reject Mobile Phone's contention that the MSD in this case should have followed its informal practice and requested Mobile Phone by deficiency letter to resolve the minor discrepancies in its application. Acceptance of corrections re-

garding minor technical data has occurred informally at the staff level; however, this practice is not utilized to correct frequency errors.

[15] *Moore's Service*, *supra*, held that a defective mutually exclusive application that has not been returned and is cured by an amendment filed after the cut-off date, but before being reached for processing, will be retained on file and given comparative consideration.

[16] Section 22.19 (a)(1)(ii) also requires that applicants show the lack of a reasonable alternative than requiring the Commission to waive the rule.

[17] *Moore's Service*, cited by Mobile Phone, is consistent with our conclusions herein. While that case permitted post-cut-off date amendments, where no processing delays would occur, it specifically excluded major amendments from such consideration. "It should be noted, however, that certain amendments may be 'major' and may therefore cause the application to be treated as newly filed and thus cut-off from comparative consideration. *See* §§ 22.31 (e) and 22.23 of the rules." *Moore's Service*, 86 FCC 2d at 795 n. 17. Mobile Phone's amendment additionally fails under *Moore's Service* because it was filed after the application was reached for processing.

[18] Mobile Phone refers to the recognition of potentially "improper influence" in circumstances where a competing applicant seeks to be a "temporary operator" pending the outcome of a case and is granted a temporary authorization. *Consolidated Nine, Inc. v. FCC*, 403 F. 2d 585 (D.C. Cir. 1968). *See United Television Co., Inc.*, 18 FCC 2d 363, 373 (1969). Mobilecomm contends that these cases are inapposite here, because Mobile Phone can not be considered an applicant for an authorization on 152.15 MHz and, therefore, not a "competing applicant".

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI Telecommunications Corporation,
Complainant,

v.

Pacific Bell Telephone Company;	File No. E-88-46
Wisconsin Bell, Inc.;	File No. E-88-48
The Chesapeake & Potomac Telephone Companies;	File No. E-88-49
New Jersey Bell Telephone Company;	File No. E-88-50
Michigan Bell Telephone Company;	File No. E-88-52
The Diamond State Telephone Company;	File No. E-88-55

Defendants.

MEMORANDUM OPINION AND ORDER

Adopted: May 25, 1990; Released: June 12, 1990

By the Commission:

I. INTRODUCTION

1. We have before us petitions filed by several local exchange carriers[1] seeking reconsideration of our action in *MCI Telecommunications Corporation v. Pacific Northwest Bell Telephone Co., et al.*, 5 FCC Rcd 216 (1990) (*Liability Order*). [2] In the *Liability Order*, we held that a complainant/customer has a right under the Communications Act to recover damages if the complainant can establish that a carrier from whom it purchased service has violated a valid rate of return prescription. We found that the complainant, MCI Telecommunications Corporation (MCI), had met its burden of establishing that the defendants had violated the Act by earning in excess of the Commission's prescribed rate of return in one or more access service categories for the period October 1, 1985 through December 31, 1986, thereby making their rates during that period unjust and unreasonable under Section 201(b) of the Communications Act. We further held that defendants are liable to MCI to the extent that MCI can establish that it was damaged as a result of the violations. [3] We also ruled that the two year statute of limitations contained in Section 415 of the Act, 47 U.S.C. § 415, posed no bar to MCI's complaints.[4]

2. In seeking reconsideration, petitioners raise four principal arguments, all of which we considered at length in the *Liability Order*. The petitioners all allege that the *Liability Order* is in direct conflict with the Court of Appeals decision in *American Telephone & Telegraph Co. v. FCC*, 836 F.2d (D.C. Cir. 1988) (" *AT & T v. FCC* ").[5] According to petitioners, MCI's complaints seek category-level damages that correspond to the category-level refunds that would have been required under the refund rules invalidated by the court in *AT & T v. FCC*. Petitioners contend that *AT & T v. FCC* establishes that carriers may not be held liable for category-level overearnings. They argue that the Commission provided no plausible basis for distinguishing the logic and principles on which the *Liability Order* is based from the refund rules found by the Court to be arbitrary and capricious.

3. In addition, Pacific Bell and the Ameritech Companies claim that the Commission incorrectly applied the Section 415 statute of limitations in deciding MCI's complaints.[6] Pacific Bell contends that the Commission's ruling that the two-year limitations period began to run on the date the defendants filed their final rate of return monitoring reports is both unlawful and contrary to the facts of the case.[7] Pacific Bell argues that, assuming MCI's complaint states a valid case of action, accrual within the meaning of Section 415 took place at the time it filed its interim monitoring report on March 30, 1987 as required under then existing Commission rules. According to Pacific Bell, MCI was put on notice of potential category-level overearnings at that time and could have properly filed its complaint long before the final monitoring report was filed on September 30, 1987.[8] The Ameritech Companies argue that the Commission's ruling cannot be squared with the specific accrual date contained in Section 415(e) of the Act.[9] That section provides that "the cause of action in respect of the transmission of a message shall . . . be deemed to accrue upon delivery or tender of delivery thereof by the carrier, not after." The petitioners argue that application of Section 415(e) bars MCI's complaint relating to access service provided by petitioners more than two years from the date MCI filed its complaints with the Commission.[10]

4. Finally, the Ameritech companies raise two additional arguments previously rejected in the *Liability Order*. First, the petitioners argue that the Commission erroneously held that the rates at issue were carrier-initiated and are properly subject to damage claims under the Act.[11] Citing the court's decision in *Direct Marketing v. FCC*, 772 F.2d 966 (D.C. Cir. 1985), the petitioners maintain that, contrary to the Commissions's ruling, "the 'practical impact' of Commission orders during 1983-84" was effectively to prescribe local exchange carrier interstate access rates.[12] Therefore, petitioners contend, the Court's holding in *Arizona Grocery v. Atchison T & S. F. Ry. Co.*, 284 U.S. 370 (1932), establishes that these rates are not subject to retroactive damage claims. Second, the petitioners contend that the Commission based its finding of liability on a legally deficient procedure.[13] They argue that at a minimum, the Commission should have designated the complaints for an evidentiary hearing before an administrative law judge to resolve what petitioners describe as disputed issues of fact regarding the accuracy of the rate of return monitoring reports.

II. DISCUSSION

5. After fully reviewing the petitioners' arguments, we find no reason to disturb the result or underlying rationale of the *Liability Order*. Reconsideration generally is not available for purposes of rearguing matters on which there has been deliberation and decision. *See Empire State*

Cable TV Co., Inc., 10 FCC 2d 341, 342 (1967); *see also, Petitions for Reconsideration of Commission Action*, 77 FCC 2d 54 (1980).[14] With two minor exceptions, the record here consists of arguments that already have been considered at length and resolved in that order. We turn now to those exceptions.

6. The first exception is Ameritech's statute of limitations argument that MCI's complaints are encompassed by Section 415(e) rather than 415(b) of the Act, and that Section 415(e) bars MCI's complaints. Although raised by Ameritech in pleadings underlying the *Liability Order*, this argument was disposed of in the broader context of our finding that Section 415 posed no bar to MCI's complaints.[15] In the interest of ensuring a full and unambiguous record on this matter, we will address Ameritech's specific argument here. Contrary to petitioner's argument, Section 415(e) is inapplicable to MCI's complaints. That Section concerns a carrier's liability to its customers for failure to transmit a message in accordance with its common carrier obligations. These proceedings do not involve disputes about any carrier's transmissions or obligations to transmit messages properly; rather, MCI's complaints go to the lawfulness of Ameritech's rates. Section 415(e) is irrelevant to such complaints. When a complaint alleges excessive rates, as we pointed out in the *Liability Order*, the cause of action accrues and the statue begins to run only when the complaining party discovers or reasonably could have discovered the basis for its claim. *See, e.g., Western Union Telegraph Co.*, 102 FCC 2d 485, 494 (1985), *recon. denied*, 1 FCC Rcd 829, 831 (1986), *aff'd in part (on other grounds)*, 857 F.2d 1535 (D.C. Cir. 1988). That occured in this case only when Ameritech filed the final reports revealing that defendants had violated the Commission's rate of return prescription.

7. The second exception is Ameritech's argument concerning rate of return monitoring reports it filed with this Commission. We noted in the *Liability Order* that the monitoring reports and their underlying methodology were developed through Rule Making for the purpose of, *inter alia*, establishing a uniform method of calculating carriers' interstate returns to be used to enforce rate of return prescriptions.[16] We also found in that order that such reports established that Ameritech exceeded its prescribed rate of return during the period covered by MCI's complaint, and, therefore, no material issue of fact needed to be resolved in that proceeding.[17] In its reconsideration petition, Ameritech reiterates its argument that the reported return improperly overstates Ameritech's actual return, thus, seeking to establish a dispute about a material fact that Ameritech claims it is entitled to have referred to an administrative law judge for resolution before any determination of liability can be made. Ameritech also argues, for the first time, that this Commission, in the context of litigation concerning the lawfulness of our rate base - rate of return calculation decisions, "does not dispute that in light of how the Commission computes rate base, a carrier's reported earnings overstate its actual earnings on interstate investment."[18]

8. Ameritech's arguments are not persuasive. The fact that Ameritech has sought judicial review of certain Commission rate base determinations does not alter the status of these determinations. They are Commission orders that bind affected parties, including Ameritech. Moreover, Ameritech is simply wrong in claiming that this Commission does not dispute that Commission rate base determinations improperly inflate a carrier's reported earnings on interstate investment. Our position in the litigation Ameritech refers to is that our rate base determinations are reasonable and lawful, and should be affirmed in every respect.[19] A carrier's reported earnings, calculated on the basis of a proper rate base, would not overstate its "actual earnings" on interstate investment. Against this background, we reaffirm our finding that no material issues of fact going to liability were presented in the record of the *Liability Order*.

III. ORDERING CLAUSE

9. Accordingly, IT IS ORDERED, that the petitions for reconsideration filed by Pacific Bell Telephone Co., The Bell Atlantic Telephone Companies and the Ameritech Companies ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] The petitioners, all defendants in the captioned proceedings, include Pacific Bell Telephone Company ("Pacific Bell"), Wisconsin Bell, Inc. and Michigan Bell Telephone Company (together "the Ameritech Companies"), and the Chesapeake & Potomac Telephone Companies, New Jersey Bell Telephone Company and The Diamond State Telephone Company (together "the Bell Atlantic Companies").

[2] MCI filed an opposition to the petitions for reconsideration to which petitioners have replied.

[3] At the time it filed the subject complaints, MCI reserved its right under our rules, 47 C.F.R. § 1.722, to file separate complaints to plead and prove damages. We therefore reserved judgment on the damages issue until both the complainant and the defendants had the opportunity to address the issue and establish a full record. *Liability Order* at 225-26. MCI filed supplemental complaints seeking damages on March 12, 1990.

[4] Section 415 provides, in pertinent part, that "[a]ll complaints against carriers for the recovery of damages not based on overcharges shall be filed with the Commission within two years from the time the cause of action accrues, and not after . . . ." 47 U.S.C. § 415(b) (1982). The term "overcharges" is defined in Section 415 to mean "charges for services in excess of those applicable thereto under the schedules of charges lawfully on file with the Commission." 47 U.S.C. § 415(g) (1982).

[5] Pacific Bell Petition at 2-13; Wisconsin Bell Petition at 5-11; Michigan Bell Petition at 5-11; Bell Atlantic Companies Petition at 1-10.

[6] Pacific Bell Petition at 13-16; Wisconsin Bell Petition at 19-20;Michigan Bell Petition at 19-20.

[7] Pacific Bell Petition at 14.

[8] Pacific Bell Petition at 14-15.

[9] Wisconsin Bell Petition at 19; Michigan Bell Petition at 19.

[10] Wisconsin Bell Petition at 20; Michigan Bell Petition at 20.

[11] Wisconsin Bell Petition at 11-16; Michigan Bell Petition at 11-16.

[12] Wisconsin Bell Petition at 12; Michigan Bell Petition at 12.

[13] Wisconsin Bell Petition at 16-19, Michigan Bell Petition at 16-19.

[14] The petitioners' arguments concerning damages are being considered, appropriately, in recently initiated supplemental complaint proceedings. *See, e.g.*, Supplemental Complaint for Damages in MCI Telecommunications Corporation v. Pacific Bell Telephone Company, File No. E-88-46 (filed Mar. 12, 1990).

[15] *Liability Order*, 5 FCC Rcd at 224-25.

[16] *Liability Order*, 5 FCC Rcd at 221, n.38.

[17] *Id.*

[18] Ameritech petition at 16-17.

[19] *See* Brief for Respondent Federal Communications Commission, Illinois Bell Telephone Co. v. FCC, Nos. 88-1175, 89-1241 (D.C. Cir., Dec. 29, 1989).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-271

In re Applications of

FINLEY WILLIS, JR. (hereafter "Willis")	File No. BPH-880503MA
MTW COMMUNICATIONS (hereafter "MTW")	File No. BPH-880504MH
ANDERSON COUNTY BROADCASTERS (hereafter "ACB")	File No. BPH-880504MJ
ANDERSON BROADCASTING COMPANY LIMITED PARTNERSHIP (hereafter "ABC")	File No. BPH-880504MV
HOMETOWN BROADCASTING OF LAWRENCEBURG, INC. (hereafter "Hometown")	File No. BPH-880504OK

For Construction Permit
for a New FM Station on Channel 271A (102.1 MHz)
in Lawrenceburg, Kentucky

HEARING DESIGNATION ORDER

Adopted: May 2, 1990; Released: June 11, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.[1]

2. The Commission requires that if there will be five or more fulltime station employees, the applicant must complete and file Section VI of Form 301, and supply a statement detailing hiring and promotion policies for women and each minority group whose representation in the available labor force is five percent or greater in the proposed service area. Although MTW has filed such statement, it is deficient. MTW has not listed any specific sources for the recruitment of minority and female job applicants. Accordingly, MTW will be required to file an amended EEO program with the presiding Administrative Law Judge within 30 days of the release of this Order or an appropriate issue will be specified by the Judge.

3. Section II, Item 4 of FCC Form 301 (October 1986) requires that an applicant specify its address (number, street, city, state) as well as the home address of each of its principals. ACB has not completed Item 4 correctly. ACB's application gives a post office box number as the residence address for Herbert L. Beasley. Accordingly, ACB must submit an amendment which gives all the information required by Section II, Item 4 to the presiding Administrative Law Judge within 30 days of the release of this Order.

4. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

5. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

7. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, MTW shall submit Section VI information in accordance with the requirement of Section 73.2080(c) of the Commission's Rules to the presiding Administrative Law Judge.

8. IT IS FURTHER ORDERED, That ACB shall submit an amendment which contains the information required by Section II, Item 4 of FCC Form 301, to the presiding Administrative Law Judge within 30 days of the release of this Order.

9. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

10. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

11. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTE

[1] On December 20, 1989 Erica Broadcasting Limited Partnership, by its general partner Digby Solomon, Inc., requested voluntary dismissal of its application (BPH-880505MT). The request is in accordance with our requirements governing such matters. Accordingly, the application was dismissed by Commission letter dated April 2, 1990.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-289

In re Applications of

KELLY LYNNE BILLINGS (hereafter "Billings")	File No. BPH-880714MI
RASA COMMUNICATIONS CORP. (hereafter "RASA")	File No. BPH-880714MS
P.K.L. PARTNERSHIP (hereafter "PKL")	File No. BPH-880714NA
LUCERNE VALLEY BROADCASTING (hereafter "Valley")	File No. BPH-880714NM

For Construction Permit
for a New FM Station on Channel 293A (106.5 MHz)
in Lucerne Valley, California

HEARING DESIGNATION ORDER

Adopted: May 10, 1990; Released: June 11, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Billings*. Billings has indicated in her application that she serves as "Traffic Manager and Sole Executive" at Station KVVQ-FM, Victorville, California. In addition, her application includes a pledge that she will resign this position upon grant of the instant application. Because Ms. Billings' continued employment at KVVQ-FM following such grant of the instant application may affect the applicant's ability to comply with the Commission's cross-interest policy, an appropriate divestiture condition will be specified below. *See Reexamination of the Commission's Cross-Interest Policy*, 4 FCC Rcd 2208 (1989) (Policy Statement); 4 FCC Rcd 2035 (1989) (Further Notice of Inquiry/Notice of Proposed Rule Making); 2 FCC Rcd 3699 (Notice of Inquiry).

3. *PKL*. The Commission requires that if there will be five or more fulltime station employees, the applicant must complete and file Section VI of Form 301, and supply a statement detailing hiring and promotion policies for women and each minority group whose representation in the available labor force is five percent or greater in the proposed service area. Although PKL has filed such statement, it is deficient. PKL has not listed minority and women's organizations specializing in minority and women candidates for job vacancies; employment services which refer candidates without regard to race, color, religion, national origin, or sex; area educational institutions with minority and women enrollments; or media with significant circulation or viewership or which are of particular interest to minorities and women. Accordingly, PKL will be required to file an amended EEO program with the presiding Administrative Law Judge, within 30 days of the release of this Order, or an appropriate issue will be specified by the Judge.

4. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequentiy, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

5. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

7. IT IS FURTHER ORDERED, That in the event of grant of Billings' application, the construction permit shall be conditioned as follows:

Prior to the commencement of operation of the station authorized herein pursuant to program test authority, the permittee shall certify to the Commission that she has divested herself of all interests in and severed all connections with Station KVVQ-FM, Victorville, California.

8. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, PKL shall submit Section VI information in accordance with the requirement of Section 73.2080(c) of the Commission's Rules to the presiding Administrative Law Judge.

9. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

10. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

11. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Communications Satellite Corporation — Transmittal Nos. 771 and 786

Revisions to F.C.C. Tariff No. 103

ORDER

Adopted: May 14, 1990; Released: June 11, 1990

By the Chief, Common Carrier Bureau:

1. By this Order, the Common Carrier Bureau terminates the proceeding initiated March 14, 1990, regarding Comsat's Transmittal No. 771. In that Order, the Bureau directed the Communications Satellite Corporation (Comsat) to show cause why the rate for Annual Contract Video Service should not be revised to reflect that this service, originally preemptible for cable restoration and thus offered at a 45 percent discount, is no longer subject to preemption. *See* Communications Satellite Corporation, 5 FCC Rcd 1819 (Com.Car.Bur. 1990) (*Show Cause Order*).

2. Pursuant to the *Show Cause Order*, Comsat filed an answer on March 22, 1990; Pan American Satellite filed an opposition on March 28, 1990, and Comsat filed its reply on April 3, 1990. On April 9, 1990, Comsat filed Transmittal No. 786, increasing the rate for Annual Contract Video Service from the discounted rate of $7.00 per minute to the standard rate of $12.78 per minute. This revision, which was not protested, became effective on May 24, 1990. Inasmuch as this revision has resolved the question presented in the *Show Cause Order*, this proceeding is moot.

3. Accordingly, IT IS ORDERED that the show cause proceeding initiated by the Common Carrier Bureau on March 14, 1990, IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 87-312

In the Matter of

Amendment of Subpart C of Part 90
of the Commission's Rules to Permit
Commercial Enterprises to be
Licensed Directly in the Special
Emergency Radio Service

MEMORANDUM OPINION AND ORDER

Adopted: June 1, 1990; Released: June 12, 1990

By the Commission:

I. INTRODUCTION

1. In June 1988, we issued a *Report and Order* [1] permitting private entrepreneurs who are not themselves eligible in the Special Emergency Radio Service (SERS) to be licensed on SERS frequencies for the limited purpose of offering communications service to eligible SERS end users.[2] We believed that these entrepreneurs or "private carriers" would expand the service options available to eligible end users and promote the efficient use of the SERS frequencies. Our decision also eliminated secondary use of eight channels, known as MED Channels 1 through 8, [3] in response to the concerns of Emergency Medical Service (EMS) operators.

2. In this *Memorandum Opinion and Order* we consider two petitions for reconsideration.[4] Both petitions ask us to modify the private carrier aspect of our decision. APCO opposes private carriage on all SERS channels while the Joint Petitioners object only to private carriage on two-way channels. In addition, both petitions ask us to restore limited secondary uses of the MED channels. Many EMS groups and local governments support these requests, while a communications company and a hospital trade association ask us to affirm all aspects of our decision.[5]

II. DISCUSSION/DECISION

3. After reexamining the issues in this proceeding we agree that some adjustments to our decision are warranted. First, we have decided to limit new non-eligible private carrier systems in the SERS to the paging-only channels. Second, we conclude that limited secondary uses of MED Channels 1 through 8 are necessary for emergency medical procedures. Therefore, we are restoring non-administrative secondary uses of these channels.

A. Private Carriers

4. We based our decision allowing private carriage on all SERS frequencies largely on the success of entrepreneurial private carriage on two-way frequencies above 800 MHz and the achievements of entrepreneurs in managing one-way medical paging systems below 800 MHz.[6] We believed that allowing private carriage on all channels in the SERS could provide eligible users with access to better equipment, spur technical innovation, introduce radio services to eligible users otherwise unable to afford it, and make an additional option available to all SERS eligibles. *Report and Order* at paras. 18, 24-25, 67. At that time, we did not differentiate between two-way channels and one-way channels in the SERS. After considering the record before us, however, we conclude that such differentiation is necessary.

One-Way Channels

5. The Joint Petitioners do not challenge the Commission's decision to license private carriers on one-way paging frequencies and, in fact, agree that private carrier consolidation of paging operations can result in substantial economies and benefits. *See* Joint Petition at n.3. APCO, however, continues to oppose private carriage on all SERS frequencies based on broad assertions that SERS eligibles do not need private carriers and that private carriers would use the SERS spectrum inefficiently. *See* APCO Petition at 3. Upon review of the record of this proceeding we must disagree with APCO's position.

6. ProNet and members of the medical community make convincing arguments that entrepreneurs can improve efficiencies on one-way paging frequencies significantly. In Dallas, Philadelphia, San Francisco, and Washington, D.C., for example, ProNet says that its use of digital equipment made it possible to page fifteen members of an emergency team with one call, whereas older analog equipment required fifteen separate calls to achieve the same result. ProNet Reply to Comments Opposing its Petition for Rule Making (February 4, 1987) at 12. The hospital community also attests to efficiencies gained when they hired entrepreneurs to operate their medical paging systems versus those attained when they operated their own systems individually. *See Notice* at para. 10. The hospitals express a need for the services of an entrepreneur and support their direct licensing in the SERS. *See, e.g.*, Reply Comments of American Hospital Association at 3.

7. The efficiencies cited above are made possible by the technical characteristics of one-way paging channels. Paging occurs in short bursts and, pages, therefore, do not use much air time. As a result, the SERS paging-only channels are not currently congested and any additional traffic that private carrier paging operations might generate would not be likely to cause congestion.[7] Furthermore, one-way channels can use spectrum efficient digital technologies that make it possible for a single channel to accommodate over 10,000 subscribers. Because private carrier operation by non-eligibles could significantly increase the efficiency and effectiveness of the paging operations of eligible end users without any accompanying disadvantages, we conclude that these private carrier operations should continue on channels designated for paging-only.[8]

Two-Way Operations

8. The majority of the opposition to private carriage centers around two-way operations. The petitioners and many commenters oppose our decision to license private carriers on two-way frequencies and ask us to reverse this aspect of our decision. According to these commenters,

non-eligible private carriers licensed on two-way frequencies would increase congestion and interference, hinder use of the frequencies for safety-related communications, be incompatible with non-profit operations on the same channel, cause SERS eligibles and state governments to lose control over the frequencies, and would not be needed or used by EMS operators. They also contend that the Commission is ignoring the concerns of the EMS community[9] and dispute the *Report and Order*'s finding that private carriers would use advanced technology. Most of these arguments were raised previously and, again, must be rejected. Significantly, however, the comments in this proceeding and those in a closely related docket[10] provide more focussed discussions than those of previous commenters. *Cf. Report and Order* at para. 17. This sharper focus on the commenters' underlying concerns brings us to conclusions different from those that we reached in the *Report and Order*.

9. For instance, previous commenters explained that one of their major concerns was congestion of the SERS frequencies. We acknowledged that two-way frequencies are congested but we did not view this fact as central to our decision because we believed private carriers might help to improve the situation. *See Report and Order* at paras. 24-25. The current commenters, however, emphasize that the crowding problem on channels used for two-way operations warrants more significant improvements than those that private carriers can accomplish. *See* Comments of National Association of State EMS Directors at 1-3. They point out, for example, that private carriers could not bring about improvements of the magnitude attainable on two-way 800 MHz systems because, unlike those systems, SERS private carriers operate on shared spectrum and are limited by the less sophisticated level of equipment available for two-way operations below 800 MHz. *See* Reply Comments of Florida Division of Communications at 2-3; Reply Comments of APCO at 2.

10. Although private carriers might help relieve the immediate congestion problem by combining individual systems and using the best equipment currently available below 800 MHz, we now recognize that a growing availability of private carriers may also encourage end users to remain on these congested channels, possibly impeding future spectrum management efforts of a greater magnitude.[11] With this in mind, we have decided for the present to prohibit additional private carrier systems operated by non-eligibles on two-way channels in the SERS. Rather than making additional service options available on these crowded shared channels, we are encouraging SERS end users to seek other available options that employ less crowded frequencies, including entrepreneurial systems above 800 MHz. Systems above 800 MHz have the added benefit of the high service quality currently attainable only on exclusively licensed frequencies.

11. Further, as a step toward mitigating current levels of congestion on the two-way SERS frequencies below 800 MHz, we will continue to emphasize spectrum reuse by requiring licensees to operate with the minimum power necessary to satisfy specific communications needs. *See* 47 C.F.R. § 90.205. Licensing additional private carriers may conflict with this spectrum reuse goal because it is likely that entrepreneurial private carriers would opt for high power, wide area systems to maximize the number of possible customers. Given existing technology and spectrum allocations, wide area systems could temporarily preclude communications of other co-channel users with more localized coverage areas.[12] This is a problem we have not faced before because until our *Report and Order*, two-way private carrier offerings of the type contemplated here were permitted only above 800 MHz where an entrepreneur can attain exclusive use of a channel within a defined service area.

12. In sum, we find that private carriers can offer significant benefits for paging operations and should continue to be licensed on SERS paging-only channels. With respect to frequencies also used for two-way operations, however, we find that whatever short term gains private carriers could accomplish might be at the expense of greater long range benefits. Rather than license additional non-eligible private carriers on two-way channels, we will consider ways to satisfy the growing demand for spectrum while reducing congestion. For example, we will consider whether better operational techniques, alternative spectrum allocations, or different technologies could generate the kind of improvements that will be necessary for efficient and effective use of the spectrum for the foreseeable future. Until we address these issues, we do not believe it prudent to license additional private carrier systems to non-eligibles on two-way SERS frequencies and shall amend our previous decision allowing such systems. We shall, however, permit private carriers licensed on two-way channels through the adoption date of this *Memorandum Opinion and Order* to continue their operations.[13]

B. Secondary Communications on the MED Channels

13. Next, we turn to the petitioners' concerns about secondary use of MED Channels 1 through 8. These eight channels are available only to eligibles in the medical services category within the the SERS. *See* 47 C.F.R. § 90.35. Prior to the *Report and Order*, eligible medical service providers could use the channels on both a primary and a secondary basis. Primary uses generally involved emergency communications. MED Channels 1, 2, and 3 could be used on a primary basis for biomedical telemetry, while MED Channels 4 through 8 could be used on a primary basis for medical control communications (such as voice communications between ambulances and emergency room physicians). Each of the MED channels also had secondary uses. On a secondary basis, eligible medical service users could use MED Channels 1 through 8 for non-primary medical transmissions and for various administrative communications. These secondary uses could range from emergency voice communications on a channel primarily reserved for medical data to administrative communications for hospital housekeeping, maintenance, and security purposes.

14. In response to EMS concerns that secondary communications were interfering with their primary emergency communications, the *Report and Order* eliminated all secondary use of MED Channels 1 through 8.[14] We found that, given existing crowding on the spectrum, the transmission of secondary messages could delay primary communications. By eliminating secondary use of MED Channels 1 through 8, we expected to make these channels available continuously for life saving transmissions. *Report and Order* at paras. 48 and 66.

15. To allow licensees adequate time in which to relocate their secondary communications to other frequencies, we permitted existing licensees to continue secondary use of MED Channels 1 through 8 until July 1, 1990. We also stated that we would consider requests for waiver of the secondary use restriction from new and

existing licensees who can show that, in their areas, secondary uses of MED Channels 1 through 8 are not harmful to primary communications. *Cf.* 47 C.F.R. § 90.151.

16. The petitioners generally support elimination of secondary uses of MED Channels 1 through 8. They contend, however, that EMS organizations need to use the MED channels for broader purposes than those allowed on a primary basis and urge us to restore limited secondary uses of the channels. *See* Joint Petition at 19; APCO Petition at 4-5. The Joint Petitioners argue that secondary use of the MED channels is particularly important for those EMS agencies that, due to equipment limitations, operate on a single MED channel. Joint Petition at 19-20.

17. Almost all of the commenters address this issue and request that we restore various degrees of secondary use. Two of these commenters, ProNet and AHA, argue that we should restore all secondary use of the MED channels because some users might otherwise have to purchase additional equipment. ProNet Opposition at 11; AHA Opposition at 3-4. Many commenters state that we should restore only those secondary communications that are EMS-related. Many commenters who supported elimination of all secondary uses of the MED channels in previous comments now state that certain limited secondary communications can be conducted on the channels without harmful interference to primary emergency communications. For example, one commenter states that:

> While CPRA originally supported the proposed ban on all secondary use, its further review indicates that limited secondary use by directly qualified medical licensees for complementary EMS uses . . . does not pose a real danger to primary channel users. Indeed it is necessary to complement the use of the channels.

Comments of California Public-Safety Radio Association, Inc. at 6.

18. The Commonwealth of Massachusetts presents additional support for the position that limited secondary use of the MED channels is necessary, particularly to make secondary EMS voice communications possible on channels reserved for EMS data communications:

> The effect of this rule [prohibiting all secondary use] is to eliminate three of the MED channels from EMS use (MED 1 - MED 3). Telemetry is used only by advanced life support units (Paramedic trucks) which constitutes only about 25% of all EMS responses; 75% of our patients require basic life support. Furthermore most ALS units use telemetry rarely, and only in cardiac cases.

Comments of Massachusetts Department of Health at 2.

19. When we eliminated secondary use of MED Channels 1 through 8, we stressed that our goal was to make the channels available continuously for life saving transmissions. *Report and Order* at paras. 48 and 66. The commenters herein suggest that certain limited secondary use of the channels would not impede this objective. In fact, it appears that one type of secondary use --medical control communications on telemetry channels -- is vital if the MED channels are to be used in an effective and spectrum efficient manner.

20. We cannot agree with ProNet and AHA, however, that we should go so far as to restore all secondary uses previously permitted. There is no new information in the record that would change our conclusion that some limitations on secondary uses of the MED channels are in the public interest. ProNet and AHA rely primarily on the argument that some licensees may have to purchase additional equipment to operate two systems: one for emergency medical needs and one for medical and administrative needs. We addressed this issue in the *Report and Order*, concluding that the public safety benefits of eliminating secondary uses outweighed the disadvantage of requiring some licensees to purchase additional equipment. *Report and Order* at para. 49. ProNet and AHA also argue that it would be a mistake to restore some secondary uses but not others because this could entangle the Commission in endless disputes over which uses are permissible. ProNet Opposition at 11; AHA Opposition at 3. We agree that a clear standard for secondary use must be established, but disagree with ProNet and AHA's implication that such a standard is not possible.

21. Those commenters favoring limited secondary use propose varying degrees to which secondary use should be restored. Under one alternative, all secondary EMS communications, including EMS administrative use, would be restored but all other administrative secondary communications would be eliminated. *See, e.g.*, Comments of North Carolina Memorial Hospital at 2. Under another alternative, only those secondary uses associated with EMS patient care and medical supervision and control would be permitted. *See* Joint Petition at 19. APCO suggests permitting secondary EMS voice communications on biomedical telemetry channels and secondary biomedical telemetry on medical control channels. *See* APCO Petition at 5. Finally, one commenter suggests that we set identical standards for all eight of the MED channels, eliminating any secondary use of the channels but permitting both biomedical telemetry and medical control on each of the channels on a primary basis. Comments of Florida Division of Communications at 2.

22. After consideration of all of the views presented, we conclude that restoring secondary administrative use of the MED channels, even limited to EMS organizations only, is not in the public interest. Throughout this proceeding, many commenters have argued persuasively that administrative communications on the MED channels are not compatible with medical communications and that administrative traffic unjustifiedly increases congestion. *See* Reply Comments of Florida Division of Communications at 4. We are not convinced that administrative communications by EMS agencies are any less disruptive to life saving communications than administrative communications by hospitals and other medical eligibles. The issue here is the type of communications permitted on the frequencies, rather than the EMS or non-EMS nature of the organizations originating the communications. We therefore shall continue to ban all administrative communications on MED Channels 1 through 8.

23. Commenters convince us, however, that EMS organizations need the flexibility within a given locality to "mix and match" channel use to maximize vital life saving communications capacity. We will, therefore, restore all of the secondary communications previously permitted on MED Channels 1 through 8 with the exception of administrative communications. Primary uses will remain unchanged. In this manner, each MED channel will be

devoted to particular emergency medical functions on a primary basis, but licensees will have the freedom, on a secondary basis, to use the channels for the broader medical communications that are also essential to their operations.[15] At the same time, the secondary communications permitted will be narrow enough so as not to exacerbate interference on the channels. Because the standard we are adopting today is similar to the one currently applicable to medical licensees under Section 90.35 of our Rules, it should be easy for the medical community to understand and follow. *Cf.* 47 C.F.R. § 90.35. Accordingly we will amend our Rules to restore such secondary uses of MED Channels 1 through 8.[16]

III. CONCLUSION

24. Upon reconsideration, we shall limit our licensing of non-eligible private carrier systems in the SERS to one-way paging-only channels. Those private carrier systems licensed on two-way channels prior to adoption of this decision may continue to operate. We also restore limited secondary use of MED Channels 1 through 8 by permitting the channels to be used on secondary basis for communications associated with the rendition or delivery of medical services. Administrative communications will continue to be prohibited on the MED channels.

IV. MODIFIED FINAL REGULATORY FLEXIBILITY ANALYSIS

Reason for Action

25. By amending our prior decision to license non-eligible private carriers in the SERS, we encourage efficient use of the SERS spectrum and facilitate future spectrum planning efforts. By restoring limited secondary uses of MED Channels 1 through 8, we respond to the needs of emergency medical service providers, many of which are small businesses.

Public Comment to Regulatory Flexibility Analysis

26. None of the Petitions for Reconsideration or subsequent comments addressed our Initial Regulatory Flexibility Analysis or Final Regulatory Flexibility Analysis.

Alternatives Considered

27. Aside from maintaining the status quo, there are no significant alternatives besides those considered in this Memorandum Opinion and Order.

V. PAPERWORK REDUCTION ACT STATEMENT

28. The action taken herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

VI. ORDERING CLAUSES

29. Accordingly, IT IS ORDERED, pursuant to 47 C.F.R. § 1.429(i), that the Petition for Reconsideration filed on August 10, 1988 by Associated Public-Safety Communications Officers, Inc. and the Joint Petition for Reconsideration filed on August 9, 1988 by the International Municipal Signal Association, the International Association of Fire Chiefs, Inc., and the National Association of State EMS Directors, ARE GRANTED to the extent stated herein and ARE DENIED in all other respects.

30. Pursuant to Sections 4(i), 303(r) and 331(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r) and 332(a), Part 90 of the Commission's Rules, 47 C.F.R. Part 90, IS AMENDED as set forth in Appendix A below, effective thirty days after publication in the Federal Register.

31. IT IS FURTHER ORDERED that this proceeding is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

Part 90 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 90 - Private Land Mobile Radio Services

1. The authority citation for Part 90 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

2. Section 90.33 is revised to read as follows:

§ 90.33 Scope.

The Special Emergency Radio Service (SERS) covers the licensing of the radio communications of the following categories of activities: medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated places, communications standby facilities, and emergency repair of public communications facilities. Entities not meeting these eligibility criteria may also be licensed in the SERS solely to provide service to SERS eligibles on one-way paging-only frequencies below 800 MHz, *i.e.*, those frequencies with the assignment limitations appearing at Section 90.53(b)(4) or (26). Private carrier systems licensed on other SERS channels prior to June 1, 1990 may continue to operate on those channels solely to provide radio communications service to SERS eligibles. Rules as to eligibility for licensing, permissible communications and classes and number of stations, and any special requirements as to each of these categories are set forth in the following sections. Frequencies available for these categories of services are shown in a separate frequency table.

3. Section 90.52 is removed in its entirety.

4. Section 90.53 is amended by revising paragraphs (b)(19) and (20) to read as follows:

§ 90.53 Frequencies available.

* * * * *

(b) * * *

(19) This frequency is authorized for use under § 90.35(a) for operations in bio-medical telemetry stations. F1B, F1D, F2B, F2D, F3E, G1B, G1D, G2B, G2D, and G3E emissions may be authorized. This frequency may be utilized on a secondary basis for all other communications related to the delivery or rendition of medical services to the public consistent with § 90.35. Use of this frequency for administrative communications is not permitted.

(20) This frequency is authorized for use under § 90.35(a) for communications between medical facilities vehicles and personnel related to medical supervision and instruction for treatment and transport of patients in the rendition or delivery of medical services. F1B, F1D, F2B, F2D, G1B, G1D, G2B, G2D, F3E and G3E emissions are authorized. This frequency may be utilized on a secondary basis for all other communications related to the delivery or rendition of medical services to the public consistent with § 90.35. Use of this frequency for administrative communications is not permitted.

* * * * *

APPENDIX B

Alaska Division of Health and Social Services, Juneau, Alaska

Alexander County Sheriff Department, Taylorsville, North Carolina

American College of Emergency Physicians, North Carolina Chapter, Charlotte, North Carolina

American Society for Hospital Engineering and the Healthcare Information and Management Systems Society of the American Hospital Association, Chicago, Illinois

AMI Frye Regional Medical Center, Hickory, North Carolina

Arkansas Department of Health, Little Rock, Arkansas

Arizona Public-Safety Communications Officers Association, Glendale, Arizona

Associated Public Safety Communications Officers, Inc., New Smyrna Beach, Florida

California Emergency Medical Services Authority, Sacramento, California

California Public-Safety Radio Association, California

Catawba Memorial Hospital, Hickory, North Carolina

Davie County Emergency Medical Services, Mocksville, North Carolina

First Branch Ambulance Service, Inc., Chelsea, Vermont

Florida Department of General Services, Tallahassee, Florida

Florida Department of Health and Rehabilitative Services, Tallahassee, Florida

Forsyth County Fire Department, Winston-Salem, North Carolina

Garner Rescue Squad, Garner, North Carolina

Golden Cross Ambulance, Inc., Claremont, New Hampshire

Hawaii Department of Health, Emergency Medical Services, Honolulu, Hawaii

International Municipal Signal Association, International Association of Fire Chiefs, and National Association of State EMS Directors, Washington, D.C.

Lycoming County Department of Emergency Services, Williamsport, Pennsylvania

Maryland Institute for Emergency Medical Services Systems, Baltimore, Maryland

Massachusetts Department of Public Health, Office of EMS, Boston, Massachusetts

Mecklenburg County Radio Services Department, Charlotte, North Carolina

Mississippi State Department of Health, Jackson, Mississippi

Nash County Emergency Services, Nashville, North Carolina

New Hampshire North Country EMS, Hanover, New Hampshire

New Mexico Health and Environment Department, Primary Care and EMS Bureau, Santa Fe, New Mexico

North Carolina Memorial Hospital, Carolina Air Care, Chapel Hill, North Carolina

Northwest Piedmont Council of Governments, Winston-Salem, North Carolina

Pennsylvania Department of Health, Harrisburg, Pennsylvania

Prince George's County Fire Department, Landover, Maryland

ProNet, Inc., Washington, D.C.

Region D Council of Governments, Boone, North Carolina

Region L Council of Governments, Rocky Mount, North Carolina

Region M Council of Governments, Fayetteville, North Carolina

Region V, Southeastern Massachusetts EMS Council, Hyannis, Massachusetts

Richmond Rescue, Inc., Richmond, Vermont

Rowan County Department of Emergency Services, Salisbury, North Carolina

Southwestern North Carolina Emergency Medical Services Council, Waynesville, North Carolina

Tennessee Department of Health and Environment, Division of EMS, Nashville, Tennessee

Texas Department of Health, Bureau of Emergency Management, Austin, Texas

Triangle J Council of Governments, Research Triangle Park, North Carolina

Union County Department of Communications, Monroe, North Carolina

Vermont Department of Health, EMS Division, Burlington, Vermont

Virginia Association of Volunteer Rescue Squads, Inc., Richmond, Virginia

Wake County EMS, Raleigh, North Carolina

Western Piedmont Council of Governments, Hickory, North Carolina

FOOTNOTES

[1] Report and Order, PR Docket No. 87-312, 3 FCC Rcd 3677 (1988) (*Report and Order*).

[2] Eligible categories of SERS end users include medical services, rescue organizations, veterinarians, physically handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas where radio is the only feasible means of obtaining emergency assistance, communications standby facilities for common carriers normally carrying essential public safety communications, and persons making emergency repairs to public communications facilities. 47 C.F.R. §§ 90.35 - 90.51. Our decision to allow private carriers to be licensed on SERS frequencies results from a Petition for Rule Making from ProNet, Inc, a supplier of medical communications systems. Petition for Rule Making, Commercial Enterprises in the SERS, RM-5662 (December 5, 1986). We proposed to grant ProNet's petition in September 1987. Notice of Proposed Rule Making, PR Docket No. 87-312, 2 FCC Rcd 5554 (1987) (*Notice*). Our proposal received considerable support from hospitals and significant opposition from local governments and Emergency Medical Service (EMS) providers.

[3] The MED channels are used on a primary basis for medical communications between ambulances and hospitals. *See* para. 13 *infra*.

[4] Joint Petition for Reconsideration of the International Municipal Signal Association (IMSA), the International Association of Fire Chiefs, Inc. (IAFC) and the National Association of State EMS Directors, PR Docket No. 87-312 (August 9, 1988) (Joint Petition); Petition for Reconsideration of Associated Public-Safety Communications Officers, Inc., PR Docket No. 87-312 (August 10, 1988) (APCO Petition).

[5] A list of all parties filing comments in this proceeding appears as Appendix B to this Memorandum Opinion and Order.

[6] *Cf.* Report and Order, PR Docket No. 86-404, 3 FCC Rcd 1838 (1988), *aff'd* Memorandum Opinion and Order, PR Docket No. 86-404, 4 FCC Rcd 356 (1989); Second Report and Order, Docket No. 18262, 46 FCC 2d 752 (1974), *aff'd* Memorandum Opinion and Order, Docket No. 18262, 51 FCC 2d 945 (1975), *aff'd sub nom.* NARUC v. FCC, 525 F.2d 630 (D.C. Cir), *cert. denied*, 425 U.S. 992 (1976).

[7] Almost from the inception of this proceeding, ProNet has noted that the concern over congestion is inapplicable to paging-only channels. *See* ProNet Reply Comments, RM 5662 at n. 11 (February 24, 1987). ProNet also has noted that its SERS operations are limited to these one-way channels. *Id.*

[8] Paging only channels are those designated with the limitation "4" or "26" in the frequency table appearing in Section 90.53(a) of the Commission's Rules, 47 C.F.R. § 90.53(a).

[9] Those commenters arguing that the Commission ignored EMS concerns apparently view our comment procedures as a "voting" process where majority rules. This is not so. Pursuant to Section 553 of the Administrative Procedure Act, 5 U.S.C. § 553(c), and Section 303(r) of the Communications Act of 1934 as amended, 47 U.S.C. § 303(r), this Commission considers all relevant material presented in the course of a rule making proceeding but bases its final decision on what it determines, in its own judgment, to be in the public interest.

[10] *Cf.* Notice of Proposed Rule Making, PR Docket No. 89-45, 4 FCC Rcd 2589 (1989). In Docket 89-45 we proposed to extend the SERS private carrier concept to other radio services below 800 MHz. That proposal is still pending.

[11] As users continue to invest in equipment they have fewer incentives to change their operations even though such changes could bring about significant improvements in spectrum use.

[12] Whether it is more spectrum efficient to use low power individual systems or fewer wide area systems appears to depend on the number of end users selecting each option. For example, a private carrier using a wide area system to reach its customers in the outlying poles of a service area may legitimately need maximum power but may limit frequency reuse in the center area if it is not serving any customers there. Likewise, a private carrier serving the center region may use maximum power to reach potential customers in the outlying areas, but may never attract those customers. On the other hand, a wide area system may be more spectrum efficient than numerous individual systems if a large number of entities choose to utilize it rather than operate their own separate systems sharing the same frequency.

[13] Virtually all of the private carriers licensed since our *Report and Order* are operating on paging-only channels and not on two-way channels. Due to the small number of private carrier systems licensed to date on two-way channels, we believe that allowing their continued operation should have no long term effects. Therefore, we are allowing these systems to continue operations and will consider on a case-by-case basis any requests to transfer or expand these two-way private carrier systems.

[14] The *Report and Order* did not change the permissible uses of MED Channels 9 and 10. These two channels are available on a primary basis for medical dispatch and mutual aid. These channels remain available on a secondary basis for alerting medical vehicles and crews.

[15] In the *Report and Order*, we stated that we would entertain waiver requests demonstrating circumstances warranting broader secondary use of the MED channels. *Report and Order* at para. 50. APCO and a few commenters ask for reversal of this waiver policy on the grounds that it "is so broad that it could virtually defeat the adopted restriction on secondary use." APCO Petition at 4. Contrary to APCO's assertions, the possibility that a rule may be waived in specific compelling cases does not defeat the rules's purpose. Rather, the waiver process makes it possible to lift a restriction when its application would not be in the public interest. *See* WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969). In any case, our decision to restore all non-administrative secondary communications on the MED channels should, as a practical matter, reduce the potential number of waiver requests. Moreover, our finding that administrative communications are disruptive to primary purposes of the MED channels would further operate to discourage waiver filings by placing a heavy burden of persuasion on applicants seeking a waiver of the ban on all secondary administrative communications.

[16] A few commenters argue that if we reinstate secondary communications, we should prohibit non-eligible private carriers from carrying these communications. The issue is the type of communications permitted on the MED channels, not whether those communications are carried over an individually-operated system or a private carrier system. Communications over private carrier systems are not those of the private licensee, but rather those of the SERS eligible unless the private carrier is itself eligible. To the extent that any non-eligible private carrier is licensed on MED Channels 1 through 8 prior to the adoption of this Memorandum Opinion and Order, we find that it should be able to provide eligible end-users with non-administrative secondary communications.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-597

In the Matter of

Amendment of Section 73.202(b), RM-6442
Table of Allotments,
FM Broadcast Stations.
(Prescott Valley, Arizona)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 17, 1990; Released: June 8, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 4 FCC Rcd 711 (1989), issued in response to a petition filed by Prescott Valley Broadcasting Co., Inc. (petitioner), licensee of Station KIHX-FM, Channel 292A, Prescott Valley, Arizona, proposing the substitution of Channel 294C2 for Channel 292A and modification of its license accordingly. Petitioner filed comments in support of its proposal. No other comments were received.

2. Channel 294C2 can be allotted to Prescott Valley at the petitioner's specified site 24 kilometers (14.9 miles) southwest of the community,[1] in conformity with the minimum distance separation requirements of the Commission's Rules.[2] Additionally, as Prescott Valley is located within 320 kilometers (199 miles) of the U.S.-Mexico border, the Commission obtained concurrence of the Mexican government to the proposed allotment of Channel 294C2 at that community.

3. In consideration of the above, we believe the public interest would be served by substituting Channel 294C2 for Channel 292A at Prescott Valley, Arizona, since it could provide a first wide coverage area FM service to the community. [3] Therefore, and in accordance with the provisions of Section 1.420(g) of the Commission's Rules, we are modifying herein the license of Station KIHX-FM to specify operation on Channel 294C2 in lieu of Channel 292A, as requested.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 23, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the community listed below, as follows:

City	Channel No.
Prescott Valley, Arizona	294C2

5. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Prescott Valley Broadcasting Co., Inc. for Station KIHX-FM, IS MODIFIED effective **July 23, 1990,** to specify operation on Channel 294C2 in lieu of Channel 294A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Although the *Notice* indicated that Channel 294C2 could be used at Prescott Valley at coordinates 34-27-32 and 112-31-37, petitioner expressed its preference for a site at coordinates 34-29-25 and 112-32-00. Use of the specified site obviates a short-spacing to a pending rule making proposal to modify Station KSMK-FM, Cottonwood, Arizona, from Channel 240A to Channel 240C1 in MM Docket No. 87-431, at coordinates 34-41-12 and 112-07-00, and to the construction permit (BPH-850712ZW) issued to Station KKGL(FM), Channel 294C1, Pinetop, Arizona, at coordinates 34-12-20 and 109-56-26.

[2] Because this allotment is made as a result of a petition for rule making filed prior to October 2, 1989, the licensee may avail itself of the provisions of Section 73.213(c)(1) of the Commission's Rules. *See* 47 CFR § 73.213(c).

[3] Channel 252C2 has been requested for allotment to Prescott Valley in MM Docket No. 88-473.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-391

In the Matter of

Amendment of Section 73.202(b), RM-6883
Table of Allotments,
FM Broadcast Stations.
(Halfway, Missouri)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 17, 1990; Released: June 8, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 6874 (1989), proposing the allotment of Channel 226A to Halfway, Missouri, as that community's first FM broadcast service. The *Notice* was issued in response to a petition filed by Melvin Pulley (petitioner). Petitioner filed comments restating his interest in the channel at Halfway. No other comments were received.

2. We believe the public interest would be served by the allotment of Channel 226A to Halfway, Missouri, as that community's first FM broadcast service. Channel 226A can be allotted to Halfway in compliance with Section 73.207 of the Commission's Rules provided there is a site restriction 6.7 kilometers north of the community. The site restriction will prevent a short-spacing to vacant Channel 225A at Ozark, Missouri.[1]

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 23, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Halfway, Missouri	226A

4. The window period for filing applications will open on **July 24, 1990,** and close on **August 23, 1990.**

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 226A are 37-40-34 and 93-15-20. The site restriction protects two applications on file for Channel 225A at Ozark. Because this allotment is made as a result of a petition for rule making filed prior to October 2, 1989, applicants may avail themselves of the provisions of Section 73.213(c) of the Commission's Rules. *See* 47 C.F.R. § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-428

In the Matter of

Amendment of Section 73.202(b), RM-6872
Table of Allotments,
FM Broadcast Stations.
(Winona, Minnesota)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 23, 1990; Released: June 8, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 7197 (1989), issued in response to a petition filed by KAGE, Inc. (petitioner), proposing the substitution of FM Channel 237C3 for Channel 237A at Winona, Minnesota. Petitioner also requested modification of its license for Station KAGE-FM, Channel 237A, to specify operation on Channel 237C3.[1] Petitioner filed supporting comments in which it reaffirmed its interest in the channel. No other comments were received.

2. We believe the public interest would be served by the substitution of Channel 237C3 for Channel 237A at Winona, Minnesota, since it could provide the community with its first wide coverage FM station. The substitution can be made in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules at the petitioner's specified site, 4.7 kilometers (2.9 miles) west of the community.[2] In addition, we are modifying the petitioner's license for Station KAGE-FM, Winona, Minnesota, to specify operation on Channel 237C3 in accordance with Section 1.420(g) of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 23, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Winona, Minnesota	237C3, 268A

4. IT IS FURTHER ORDERED, That pursuant to Section 316 of the Communications Act of 1934, as amended, the license of KAGE, Inc. for Station KAGE-FM, Winona, Minnesota, IS MODIFIED TO SPECIFY operation on Channel 237C3 in lieu of Channel 237A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Petitioner is also the licensee of Station KAGE(AM), Winona, Minnesota, and was granted a construction permit (File No. BP-891101AE) on May 1, 1990 to increase the station's daytime power from 1 kw to 4 kw.

[2] The coordinates for Channel 237C3 are 44-03-00 and 91-42-00. Because the petition for rule making in this proceeding was filed prior to October 2, 1989, the licensee may avail itself of the provisions of Section 73.213(c) of the Commission's Rules. *See* 47 C.F.R. § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-382

In the Matter of

Amendment of Section 73.202(b),	RM-6753
Table of Allotments,	
FM Broadcast Stations.	
(Blue Earth, Minnesota)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 23, 1990; Released: June 8, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 6681 (1989), proposing the allotment of FM Channel 270C3 to Blue Earth, Minnesota, as that community's second FM broadcast service. The *Notice* was issued in response to a petition filed by KBEW, Inc. (petitioner).[1] Petitioner filed comments in support of the *Notice*. No other comments were received.

2. As stated in the *Notice*, the petitioner requested the allotment of Channel 251C3 to Blue Earth.[2] However, to avoid the need for comparative consideration of petitioner's proposal and another request to substitute Channel 251C2 for Channel 251A at Emmetsburg, Iowa (RM-6798), we proposed the allotment of Channel 270C3 at Blue Earth. Channel 270C3 required a site restriction 19 kilometers (11.8 miles) northwest of the community. On August 14, 1989, Palo Alto Broadcasting Company, the proponent for Channel 251C2 at Emmetsburg, withdrew its interest in the proposal; and the Chief, Allocations Branch, dismissed, by letter, the Emmetsburg petition on August 23, 1989. As a result, the petitioner, in its comments, requests that the Commission allot Channel 251C3 to Blue Earth instead of Channel 270C3 since there is no longer a need to avoid comparative consideration of the proposals. Petitioner notes that allotment of Channel 251C3 at Blue Earth does not require a site restriction and would better promote the public interest by allowing the community to be served more effectively.

3. Based on the above information, we believe the public interest would be served by the allotment of Channel 251C3 to Blue Earth as that community's second FM broadcast service. Channel 251C3 can be allotted to Blue Earth, Minnesota, in compliance with the spacing requirements without a site restriction. [3]

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 23, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Blue Earth, Minnesota	251C3, 283C2

5. The window period for filing applications will open on **July 24, 1990,** and close on **August 23, 1990.**

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Petitioner is also the licensee of daytime Station KBEW(AM), Blue Earth, Minnesota.

[2] Initially, the petitioner requested the allotment of Channel 251A to Blue Earth, Minnesota. However, after the Commission's rules creating the C3 class of FM stations became effective, petitioner amended its petition for rule making to request the allotment of Channel 251C3.

[3] The coordinates for Channel 251C3 are 43-38-18 and 94-06-00. Because this allotment is made as a result of a petition for rule making filed and amended prior to October 2, 1989, applicants may avail themselves of the provisions of Section 73.213(c) of the Commission's Rules. *See* 47 C.F.R. § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-373

In the Matter of

Amendment of Section 73.202(b), RM-6873
Table of Allotments,
FM Broadcast Stations.
(Lexington, Mississippi)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 23, 1990; Released: June 8, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 6651 (1989), proposing the substitution of FM Channel 290C3 for Channel 292A at Lexington, Mississippi, and modification of the license for Station WLTD(FM) to specify the higher class channel. The *Notice* was issued in response to a petition filed by J. Scott Communications, Inc. (petitioner). Petitioner filed comments in which it reaffirmed its interest in the channel. No other comments were received.

2. As indicated in the *Notice*, Channel 290C3 can be allotted to Lexington at the petitioner's specified site, consistent with the minimum distance separation requirements of the Commission's Rules.[1]

3. We believe the public interest would be served by the substitution of Channel 290C3 for Channel 292A at Lexington, Mississippi, since it could provide the community with a second wide coverage FM service. Therefore, in accordance with the provisions of Section 1.420(g) of the Commission's Rules, we are modifying the license of Station WLTD(FM) to specify operation on Channel 290C3 in lieu of Channel 292A at Lexington, Mississippi.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 23, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Lexington, Mississippi	273C3,[2] 290C3

5. IT IS FURTHER ORDERED, That pursuant to Section 316 of the Communications Act of 1934, as amended, the license of J. Scott Communications, Inc., for Station WLTD(FM) IS MODIFIED TO SPECIFY operation on Channel 290C3 in lieu of Channel 292A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The coordinates for Channel 290C3 are 33-00-00 and 89-53-30. Because the petition for rule making in this proceeding was filed prior to October 2, 1989, the licensee may avail itself of the provisions of Section 73.213(c) of the Commission's Rules. *See* 47 C.F.R. § 73.213(c).

[2] In a *Report and Order* in MM Docket No. 89-407, DA 90-624, released May 2, 1990, Channel 273C was substituted for Channel 273A at Lexington, Mississippi, and the construction permit for Station WDLG(FM) was modified to specify operation on this higher class channel. This action becomes effective June 15, 1990.

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN. Docket No. 90-56

In the Matter of

Amendment of Part 2 of the Commission's Rules to Allocate Spectrum for Mobile-Satellite Services in the 1530-1544 MHz and 1626.5-1645.5 MHz Bands	RM-6459

ORDER GRANTING EXTENSION OF TIME

Adopted: June 4, 1990; Released: June 6, 1990

By the Chief Engineer:

1. The American Mobile Satellite Corporation (AMSC) has requested an extension of the reply comment period in the above proceeding. The current due date for reply comments is June 11, 1990. *See Notice of Proposed Rule Making* (*Notice*), GEN Docket No. 90-56, 5 FCC Rcd 1255 (1990). AMSC requests an extension to July 9, 1990.

2. As the basis for its request, AMSC cites the extensive technical arguments filed by two commenters. AMSC states that these comments address virtually every issue raised in the *Notice*, including the central issue of potential interference between the INMARSAT system currently operating in the subject bands and any future mobile satellite system(s) that might operate in these bands. According to AMSC, more time will be needed to fully address these comments and to provide the Commission with as complete a record as possible. Further, AMSC states that no other party to this proceeding objects to the extension of time.

3. The Commission desires as complete a record as possible prior to making a final decision in this matter. The Commission believes that additional time for filing reply comments is appropriate in light of the nature of the comments filed and the complexity of the issues raised. Further, this extension of time will not impede our disposition of the proceeding. Accordingly, pursuant to authority found in Section 4(i), 302, and 303 of the Communications Act of 1934, as amended, IT IS ORDERED that the reply period in this proceeding IS EXTENDED to July 9, 1990.

FEDERAL COMMUNICATIONS COMMISSION

Thomas P. Stanley
Chief Engineer

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-278

In re Applications of

SUGARLAND BROADCASTING, INC. (hereafter "Sugarland")	File No. BPH-880615MC
GOOD FORTUNE BROADCASTING (hereafter "Good Fortune")	File No. BPH-880616MA
GOLDEN GIRLS COMMUNICATIONS, INC. (hereafter "Golden Girls")	File No. BPH-880616MG
KATHLEEN PYNES HEBERT (hereafter "Hebert")	File No. BPH-880616MV
VIRGIE HARE DU TREIL (hereafter "du Treil")	File No. BPH-880616NH
RESERVE BROADCASTERS LIMITED PARTNERSHIP (hereafter "RBL")	File No. BPH 880616MF (DISMISSED HEREIN)

For Construction Permit for a
New FM Station on Channel 235A (94.9 MHz)
in Reserve, Louisiana

HEARING DESIGNATION ORDER

Adopted: May 15, 1990; Released: June 12, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Reserve*. Pursuant to the *Report and Order* in MM Docket No. 84-750, 50 Fed. Reg. 19936 (May 13, 1985), the Commission established criteria by which an application's substantial completeness could be determined. In order to be deemed sufficient for tender, commercial FM broadcast applications must include a transmitter site map as described in FCC Form 301, Section V-B, Item 13 and in the Commission's *Public Notice*, Mimeo 3693, released April 5, 1985. *See* 50 Fed. Reg. 19945 at para. 4(b). The *Public Notice*, which was republished in the Federal Register pursuant to Commission Order, clarifies the requirements found in FCC Form 301 that each applicant submit a 7.5 minute series U.S. Geological Survey topographical quadrangle map which identifies the transmitter site. *See* 51 Fed. Reg. 45945 (Dec. 23, 1986). *See also FM Transmitter Site Map Submissions Required by FCC Forms 301 and 340*, 1 FCC Rcd 381 (1986). The *Public Notice* specifies certain technical requirements that the site map must satisfy in order to be considered tenderable. Specifically, the applicant must provide a site map that shows along the printed margin of both axes at least two coordinate markings, specifically labeled by USGS, one on either side of the marked site. Reserve's transmitter site map is lacking the requisite "tick mark" at West Longitude 90^0 40' 00". Consequently, the staff was unable to verify the coordinates of the proposed site, the presence of other, nearby communications facilities and of obstructing terrain features, and the ground elevation of the transmitter site. *See* 50 Fed. Reg. at 19945. Accordingly, Reserve's application was inadvertently accepted for tender and will be dismissed herein.

3. *Good Fortune*. The Commission requires that if there will be five or more fulltime station employees, the applicant must complete and file Section VI of Form 301, and supply a statement detailing hiring and promotion policies for women and each minority group whose representation in the available labor force is five percent or greater in the proposed service area. Although Good Fortune has filed such a statement, it is deficient. Good Fortune has not listed minority and women's organizations specializing in minority and women candidates for job vacancies; employment services which refer candidates without regard to race, color, religion, national origin, or sex; area educational institutions with minority and women enrollments; or media with significant circulation or viewership or which are of particular interest to minorities and women. Accordingly, Good Fortune will be required to file an amended EEO program with the presiding Administrative Law Judge, within 30 days of the release of this Order, or an appropriate issue will be specified by the Judge.

4. *Sugarland*. Information before the Commission indicates that Sugarland was organized and is affiliated with Sonrise Management Services ("Sonrise"). Sonrise has been the subject of numerous "real party-in-interest" issues added by presiding Administrative Law Judges in a number of mutually exclusive proceedings. For example, issues concerning Sonrise have been designated in each of the following proceedings:

City/State	Docket No.
Solona, Florida	87-464
Rockledge, Florida	87-556
Silver Springs, Florida	88-119
East Ridge, Tennessee	88-122
Des Moines, Iowa	88-238
Nags Head, North Carolina	88-277
Tyler, Texas	88-280
Raleigh, North Carolina	88-306
Sedona, Arizona	88-335
Mableton, Georgia	88-400
Evansville, Indiana	88-403
Swanton, Ohio	88-432
Atlantic City, New Jersey	88-433

Identical issues were specified in each of these proceedings: whether or not Sonrise was a real party-in-interest in the subject applicant, whether or not the applicant's organizational structure was a sham, and the effect thereof on the applicant's qualifications to be a Commission licensee. In each of the proceedings listed above, the Sonrise-affiliated applicant has dismissed its application rather than resolving these issues. These unresolved issues call into question Sugarland's qualification to be a Commission licensee. Therefore, such issues will be specified and tried against Sugarland in this proceeding.

5. *Golden Girls, Hebert, and du Treil.* Our engineering study indicates that the proposals of Golden Girls, Hebert, and du Treil may significantly exceed the ANSI guidelines for human exposure to radio frequency (RF) radiation as outlined in OST Bulletin No. 65 (October 1985). Consequently, we are concerned that the above applicants may have failed to comply with the environmental criteria set forth in the *Report and Order* in GEN Docket No. 79-163, 51 Fed. Reg. 14999 (April 12, 1986). Under the rules, applicants must determine whether their proposals would have a significant environmental effect under the criteria set out in 47 C.F.R. § 1.1307. If the application is determined to be subject to environmental processing under the 47 C.F.R. § 1.1307 criteria, the applicant must then submit an Environmental Assessment (EA) containing the information delineated in 47 C.F.R. § 1.1311. 47 C.F.R. § 1.1307 states that an EA must be prepared if the proposed operation would cause exposure of workers or the general public to levels of RF radiation exceeding specific standards. Since Golden Girl's, Hebert's, and du Treil's proposals may have a significant environmental impact as defined by 47 C.F.R. § 1.1307, they will be required to submit the environmental impact information described in 47 C.F.R. § 1.1311. This study must include the effects of the co-located AM station, WCKW, Garyville, Louisiana. In this regard, if the site is presently fenced in compliance with the guidelines, the applicants above are required to so state and give the distance from the base of the tower to the fence. Accordingly, Golden Girls, Hebert, and du Treil will be required to file, within 30 days of the release of this Order, an EA with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. *See Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

6. The applicant below has petitioned for leave to amend its application on the dates shown. The accompanying amendments were filed after the last date for filing amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	AMENDMENTS FILED
Sugarland	December 12, 1988; January 9, 1989; May 5, 1989; May 30, 1989; June 23, 1989; September 13, 1989; November 2, 1989

7. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and the applicant below have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by Good Fortune would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

8. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

9. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

10. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of Sugarland.

2. To determine whether Sugarland's organizational structure is a sham.

3. To determine, from the evidence adduced pursuant to Issues 1 through 2 above, whether Sugarland possesses the basic qualifications to be a licensee of the facilities sought herein.

4. If a final environmental impact statement is issued with respect to Golden Girls, Hebert, and du Treil in which it is concluded that the proposed facilities are likely to have an adverse effect on the quality of the environment, to determine whether

the proposals are consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §§ 1.1301-1319.

5. To determine whether there is a reasonable possibility that the tower height and location proposed by Good Fortune would constitute a hazard to air navigation.

6. To determine which of the proposals would, on a comparative basis, best serve the public interest.

7. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

11. IT IS FURTHER ORDERED, That the application filed by Reserve IS HEREBY DISMISSED.

12. IT IS FURTHER ORDERED, That in accordance with paragraph 5 hereinabove, Golden Girls, Hebert, and du Treil shall submit the environmental assessment required by 47 C.F.R. § 1.1311 to the presiding Administrative Law Judge within 30 days of the release of this Order, with a copy to the Chief, Audio Services Division.

13. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, Good Fortune shall submit Section VI information in accordance with the requirement of Section 73.2080(c) of the Commission's Rules to the presiding Administrative Law Judge.

14. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Sugarland ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

15. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

16. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

17. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

18. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-261

In re Applications of

COSHOCTON BROADCASTING COMPANY (hereafter "Coshocton")	File No. BPH-880714MK
MIC RATHJE (hereafter "RathJe")	File No. BPH-880714MO
GARY A. PETRICOLA (hereafter "Petricola")	File No. BPH-880714NG
HOMETOWN BROADCASTING COMPANY, INC. (hereafter "Hometown")	File No. BPH-880714NO

For Construction Permit for a
New FM Station on Channel 249A in
Byesville, Ohio

HEARING DESIGNATION ORDER

Adopted: May 2, 1990; Released: June 12, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Hometown*. Hometown indicates in its application that it intends to mount its antenna on an existing but unused cable television tower. However, the Commission's Antenna Survey Branch has no record of an existing tower at the coordinates specified in the application. Accordingly, since no determination has been received as to whether the antenna proposed by Hometown would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

3. *Rathje*. Rathje proposes to sidemount its antenna on the existing WILE(AM) and WCMJ(FM) tower. Our engineering study indicates that this proposal may significantly exceed the ANSI guidelines for human exposure to radio frequency (RF) radiation as outlined in OST Bulletin No. 65 (October 1985), entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Radiation." Consequently, we are concerned that Rathje may have failed to comply with the environmental criteria set forth in the *Report and Order* in GEN Docket No. 79-163, 51 Fed. Reg. 14999 (April 12, 1986). Under the rules, applicants must determine whether their proposals would have a significant environmental effect under the criteria set out in 47 C.F.R. § 1.1307. If the application is determined to be subject to environmental processing under the 47 C.F.R. § 1.1307 criteria, the applicant must then submit an Environmental Assessment (EA) containing the information delineated in 47 C.F.R. § 1.1311. 47 C.F.R. § 1.1307 states that an EA must be prepared if the proposed operation would cause exposure of workers or the general public to levels of RF radiation exceeding specific standards. Since Rathje's proposal may have a significant environmental impact as defined by 47 C.F.R. § 1.1307, it will be required to submit the environmental impact information described in 47 C.F.R. § 1.1311. This study must include the effects of the proposed operation and the WILE(AM) and WCMJ(FM) operations. In this regard, if the site is presently fenced in compliance with the guidelines, Rathje is required to so state and give the distance from the base of the tower to the fence. Accordingly, Rathje will be required to file, within 30 days of the release of this Order, an EA with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. *See Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

4. Since no determination has been received from the Federal Aviation Administration as to whether the antenna proposed by Petricola would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

5. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

6. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by Petricola and Hometown would constitute a hazard to air navigation.

2. If a final environmental impact statement is issued with respect to Rathje in which it is concluded that the proposed facility is likely to have an adverse effect on the quality of the environment, to

determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §§ 1.1301-1319.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

8. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

9. IT IS FURTHER ORDERED, That in accordance with paragraph 3 hereinabove, Rathje shall submit the environmental assessment required by 47 C.F.R. § 1.1311 to the presiding Administrative Law Judge within 30 days of the release of this Order, with a copy to the Chief, Audio Services Division.

10. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

11. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

12. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-290

In re Applications of

KEVIN POTTER (hereafter "Potter") File No. BPH-880706MC

RED RIVER RADIO (hereafter "Red") File No. BPH-880707MF

MARK RODRIGUEZ, JR. (hereafter "Rodriguez") File No. BPH-880707MJ

COOKE COUNTY MEDIA (hereafter "Cooke") File No. BPH-880707ML

For Construction Permit for a
New FM Station on Channel 300C2 (107.9 MHz)
in Gainesville, Texas

HEARING DESIGNATION ORDER

Adopted: May 10, 1990; Released: June 12, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Potter.* Potter petitioned for leave to amend his application on November 17, 1988. The accompanying amendment proposes a new transmitter site, as well as a reduction in the proposed tower height. Potter states that the Federal Aviation Administration (F.A.A.) "advised" him that it would not approve his original proposal. Consequently, Potter asserts that good cause exists for acceptance of the amendment. However, our review of the amendment does not disclose any evidence identifying the details of the F.A.A. notification. Specifically, Potter has failed to address the date that he was notified by F.A.A. regarding its determination and the circumstances surrounding F.A.A.'s determination. Without such information, the Commission cannot make a good cause determination pursuant to 47 C.F.R. §73.3522. Accordingly, Potter's November 17, 1988 amendment cannot be accepted and will be returned herein.

3. Moreover, since no determination has been received from the Federal Aviation Administration as to whether the antenna proposed by Potter would constitute a hazard to air navigation, an issue with respect thereto will be included and the F.A.A. made a party to the proceeding.

4. *Rodriguez.* Rodriguez timely amended his application on October 6, 1988, the last date for filing minor amendments as of right, to change transmitter sites. The amendment included the name and phone number of the person contacted regarding the use of the proposed site. However, there is no information identifying that person as being authorized to make any decision regarding the site. Accordingly, Rodriguez will be required to submit a clarifying amendment, which contains the requisite information, to the presiding Administrative Law Judge within 30 days after the release date of this Order.

5. The applicants below have petitioned for leave to amend their application on the dates show. The accompanying amendments were filed after October 6, 1988, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	AMENDMENTS FILED
Potter	August 16, 1989
Rodriguez	December 30, 1988

6. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

7. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by Potter would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

9. IT FURTHER ORDERED, That Potter's November 17, 1988 petition for leave to amend IS DENIED and the accompanying amendment IS RETURNED herein.

10. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Potter and Rodriguez ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

11. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

12. IT IS FURTHER ORDERED, That Rodriguez shall file an amendment as required by Paragraph 4, above, with the presiding Administrative Law Judge within 30 days after the release date of this Order.

13. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

14. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

15. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-303

In the Matter of

Amendment of Section 73.202(b), RM-7291
Table of Allotments,
FM Broadcast Stations.
(Harlan, Iowa)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 30, 1990; Released: June 12, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it the petition for rule making filed by John Talbott d/b/a KNOD (petitioner), requesting the substitution of Channel 287C3 for Channel 288A at Harlan, Iowa, and the modification of its license for Station KNOD(FM) to specify operation on the higher powered channel. Petitioner states that it will apply for the channel, if allotted.

2. Channel 287C3 can be allotted to Harlan in compliance with the Commission's minimum distance separation requirements and can be used at the station's licensed transmitter site.[1] As requested, we also propose to modify petitioner's license for Station KNOD(FM) to specify operation on Channel 287C3. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for use of the channel at Harlan or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

3. We believe the public interest would be served by proposing the substitution of Channel 287C3 for Channel 288A at Harlan, Iowa, since it could enable Station KNOD(FM) to expand its coverage area. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Harlan, Iowa	288A	287C3

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **August 2, 1990,** and reply comments on or before **August 17, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

John W. Talbott
P.O. Box 723
Harlan, Iowa 51537
(Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will

be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 41-37-00 and West Longitude 95-16-10.

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN Docket No. 87-389

In the Matter of

Revision of Part 15 of the Rules regarding the operation of radio frequency devices without an individual license - Sensormatic Petition for Reconsideration.

MEMORANDUM, OPINION AND ORDER

Adopted: May 25, 1990; Released: June 12, 1990

By the Commission:

1. By this action, the Commission grants in part the petition filed by the Sensormatic Electronics Corporation (Sensormatic) requesting reconsideration of the *First Report and Order* in this proceeding.[1] Specifically, we are delaying for one year the implementation of a portion of Section 15.249 of the new rules addressing non-licensed operation within the frequency band 902-905 MHz.[2] This action will allow the manufacturers and users of anti-theft equipment to develop and install systems that are less susceptible to interference from new Part 15 devices.

BACKGROUND

2. Part 15 of the Commission's rules governs the operation of radio frequency devices without an individual license. In the *First Report and Order*, the Commission adopted a comprehensive revision of these rules. The objective of this action was to encourage more effective use of the radio frequency spectrum while providing additional technical and operational flexibility in the design, manufacture and use of non-licensed devices.

3. Under the former Part 15 rules, the following devices were permitted to operate in the band 902-928 MHz: general purpose periodic transmitters; spread spectrum transmitters; devices that measure the characteristics of a material; control and security alarm transmitters; and, transmitters used as field disturbance sensors.[3] In the *First Report and Order*, the Commission, *inter alia*, permitted for the first time the operation of *any type* of device within this band. This new general authority for operation in the 902-928 MHz band is provided in Section 15.249 of the rules.

SENSORMATIC PETITION

4. Sensormatic manufactures anti-theft field disturbance sensors that operate under Part 15 in the 902-928 MHz band. These sensors transmit radio signals and detect the reflection of those signals from tags attached to clothing or other articles for which theft protection is desired. Sensormatic, in its petition, indicates concern that new Part 15 devices operating in the 902-928 MHz band will cause interference to its anti-theft systems, rendering them ineffective. Interference is likely, Sensormatic maintains, because video transmitters and other newly-permitted Part 15 devices would be marketed and demonstrated in shopping malls near where the Sensormatic anti-theft systems are used. It adds that such interference could result in a major increase in the number of items stolen from retail stores, thereby causing increased costs to consumers. Sensormatic states that some 30,000 installed Sensormatic systems, protecting billions of dollars of merchandise, could be affected.

5. Sensormatic's petition contains a report from SRI International (SRI) that states that new Part 15 devices operating in the 902-928 MHz band pursuant to Section 15.249 could cause harmful interference to the Sensormatic equipment at distances of up to 1000 feet.[4] Such interference at this distance could be caused by a narrowband signal or a Part 15 television video carrier located on the same frequency as that employed by the Sensormatic receiver. SRI also states that the audio carrier of a Part 15 television transmission could cause harmful interference at 300 feet, and the video sidebands of a television transmission at 30 feet. SRI indicates that harmful interference from a spread spectrum transmission could occur at 1000 feet, although tests with commercially-available spread spectrum transmitters showed interference occurred only within 10 feet. Potential interference distances for Part 15 periodic transmitters, control and security alarm device transmitters or other types of Part 15 devices were not determined. Sensormatic acknowledges that its equipment also is susceptible to interference from equipment in the authorized services operating in the 902-928 MHz band and from other Part 15 equipment operating in this band under the former Part 15 rules.[5] However, Sensormatic maintains that it can eliminate interference caused by authorized services or previously authorized types of Part 15 devices more easily than interference caused by new Part 15 devices. Further, Sensormatic informs us that it currently is developing a new digital microwave system that will be capable of changing frequency if interference is detected.

6. In order to enable it to resolve interference problems that may occur, Sensormatic requests that new types of Part 15 devices be prohibited from operation within the 902-905 MHz portion of the band. Under this arrangement, should interference from Part 15 devices operating under the new rules be received, Sensormatic would be able to change the operating frequency of its equipment to a frequency that is not used by these new devices. To implement this change, Sensormatic requests that we either: 1) permanently preserve the 902-905 MHz band for Part 15 devices that were permitted under the former rules; or, 2) indefinitely preserve the band but give notice that the Commission plans to revisit this rule in 10 years and may revise it at that time, depending on the state of the technology in use.

COMMENTS AND OTHER FILINGS

7. Comments in opposition to Sensormatic's petition were filed by the Electronic Industries Association (EIA), Landmark Entertainment Group, Wireless Technology, Inc. (Wireless), Edward E. Thomas on behalf of Fancher Associates, Inc., Knogo Corporation (Knogo), Go-Video, Inc., and Gemini Industries, Inc. In addition, the

Sensormatic petition drew a large number of Congressional inquiries which were placed in the record. Some indicated concern over potential interference to Sensormatic equipment. Others argued that granting the Sensormatic request would adversely affect the use of the 902-928 MHz band for new technologies and devices.

8. In general, the opposing parties emphasize the Commission's regulations stating that Part 15 devices are not provided protection from interference and that persons operating under Part 15 have no vested or recognizable right to the continued use of any given frequency.[6] Some argue that Sensormatic has had ample opportunity to redesign its equipment and should not enjoy Commission protection when others have had to cope with the risks traditionally inherent in Part 15 operation. As a practical matter, Knogo and EIA point out that the power allowed new devices in the 902-928 MHz band is 100 times less than the power permitted the Sensormatic transmitters. New devices, it is argued, will experience severe interference from Sensormatic transmitters long before they themselves could cause interference to Sensormatic receivers. Thus, the commenters claim, the scenario most feared by Sensormatic, that the new devices will be demonstrated in shopping malls, is unlikely to occur.

DISCUSSION

9. The issues before us are largely matters of physics and long standing Commission policies. There is little question that, under the proper circumstances, a device operating in the 902-928 MHz band can interfere with the extremely weak signal from a Sensormatic merchandise tag. That such interference can occur, given the design of the Sensormatic system, is predictable. The SRI report submitted by Sensormatic shows this to be the case.[7] It is just as predictable, however, that the Sensormatic transmitter, always on and operating at 100 times the power permitted for the new Part 15 devices, is also likely to cause interference to the new devices and at greater distances.[8] New Part 15 devices will have to accept this risk.

10. Based on the foregoing, Sensormatic's request, that the Commission not permit, indefinitely, new Part 15 devices in the 902-905 MHz portion of the 902-928 MHz band, does not appear justified. Any such protection would undermine the basic principles of the Part 15 rules. Under Part 15, radio equipment is permitted to operate without a license on frequencies allocated to the authorized radio services so long as the operation does not cause harmful interference to the authorized services. A corollary of this principle is that a Part 15 device must accept any interference from other radio equipment. Any permanent or indefinite protection for Sensormatic would almost surely spur requests to protect other types of Part 15 devices. These requests would be difficult to accomodate and to grant them would reduce the flexibility to manufacture and sell Part 15 devices.

11. The Commission is sensitive, however, to the fact that the Sensormatic Corporation, an industry leader, has sold many thousands of its systems to stores across the country. Although we believe the interference potential of newly authorized Part 15 devices will be very slight, we are nonetheless persuaded, out of an abundance of caution, to grant some degree of relief from the immediate implementation of the new rules.[9]

12. We note that Sensormatic, in *ex parte* discussions, has indicated that its new system, designed to be resistant to interference, will be available within one or two years.[10] Sensormatic has asked for time to allow the new system to be sold and put into use. We do not, however, wish to delay the development of new technology and consumer devices for an unnecessarily long period.[11] As stated previously, we believe that, in practice, the interference threat from new Part 15 devices to existing systems is slight. Thus, after considering the concerns of the parties, we believe that, on balance, the public interest would best be served by delaying the introduction of new devices in the 902-905 MHz band for one year. Combined with the one year since these rules were adopted, Sensormatic will have had adequate opportunity to develop its new equipment. In addition, it is likely that it will be several years after this transition period is over before new Part 15 devices operating in the band 902-905 MHz will be available in large quantities. Therefore, for a period of one year from the adoption of the *Memorandum, Opinion and Order*, we will not permit the importation, marketing, authorization or operation of intentional radiators under Section 15.249 within the band 902-905 MHz. We will continue to permit and authorize within this frequency band any types of devices that were permitted under the rules in existence prior to the *First Report and Order*. As such, devices operating in the band 902-905 MHz must be authorized and operated under rule sections other than Section 15.249.[12]

ORDERING CLAUSES

13. In accordance with the above discussion and pursuant to the authority contained in Sections 4(i), 301, 302 and 303 of the Communications Act of 1934, as amended, IT IS ORDERED that the Petition for Reconsideration filed by Sensormatic Electronics Corporation IS GRANTED to the extent indicated herein and in all other respects IS DENIED. In addition, IT IS ORDERED that Part 15 of the Commission's Rules and Regulations IS AMENDED as set forth below. These rules and regulations are effective upon 30 days from the date of publication in the Federal Register.

CHANGES TO THE REGULATIONS

14. Title 47 of the Code of Federal Regulations, Part 15 is amended as follows:

1. The authority citation for Part 15 continues to read as follows:

Authority: Sec. 4, 302, 303, 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303, 304, and 307.

2. Section 15.37 is amended by adding a new paragraph (d) to read as follows:

Section 15.37 Transition provisions for compliance with the rules.

* * * * *

(d) Prior to May 25, 1991, no person shall import, market or operate intentional radiators within the band 902-905 MHz under the provisions of Section 15.249. Until that date, the Commission will not issue a grant of equipment authorization for equipment operating under Section 15.249 if the equipment is designed to permit operation within the band 902-905 MHz.

3. Section 15.249 is amended by adding a new paragraph (e) to read as follows:

Section 15.249 Operation within the band 902 - 928 MHz, 2400 - 2483. 5 MHz, 5725 - 5875 MHz, and 24. 0 - 24. 25 GHz.

* * * * *

(e) Parties considering the manufacture, importation, marketing or operation of equipment under this section should also note the requirement in Section 15.37(d).

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] *See First Report and Order,* GEN Docket No. 87-389, 4 FCC Rcd 3493 (1989). Unless otherwise stated, all of the references herein to the Part 15 regulations are to the rules adopted therein.

[2] *See* 47 CFR Section 15.249.

[3] *See* 47 CFR Sections 15.122, 15.126, 15.192, 15.205, and 15.309, respectively, of the former rules.

[4] Harmful interference is defined in Section 2.1 of our rules as interference which "seriously degrades, obstructs, or repeatedly interrupts a radiocommunication service". It appears that the interference levels measured by SRI meet this definition.

[5] Authorized radio services using the band 902-928 MHz include industrial, scientific and medical equipment operating under Part 18 of our rules, automatic vehicle monitoring systems operating under Part 90 of our rules, amateur radio service stations operating under Part 97 of our rules, and U. S. Government fixed, mobile and radiolocation stations.

[6] *See* 47 CFR Section 15.5.

[7] The Commission's Laboratory staff performed its own tests on two models of the Sensormatic field disturbance sensors. These tests were performed at a local shopping mall and at the Commission's Laboratory. Our tests confirmed that the Sensormatic equipment is susceptible to interference from low-level unwanted signals that fall within the passband of its receiver. While such tests are useful in demonstrating the level of undesired emissions that can cause interference, we realize they may not necessarily provide a prediction as to the amount of interference that will actually occur. There are a number of variables, such as the incident angle of the interfering signal to the Sensormatic devices receiving antenna, the sensitivity adjustment of the Sensormatic equipment, the placement of intervening objects, and the proximity of the frequency of the interfering signal to the frequency employed by the Sensormatic receiver, that affect the severity of the interference. We have little evidence of how often interference actually occurs to Sensormatic equipment from equipment operating in the authorized services and from Part 15 devices operating under the former rules. Indeed, interference to these devices is not necessarily easy to observe. Anti-theft equipment receiving harmful interference ignores tags passing through its sensors. As such, interference is only likely to be noticed by the user when testing the system, which could happen infrequently.

[8] The Commission's Laboratory has had occasion in the course of its equipment authorization activities to test one of the first Part 15 devices, a video transmitter, submitted for authorization under the new rules. As expected, its much lower power renders it very susceptible to harmful interference from a Sensormatic transmitter, well before it might be close enough to cause interference itself.

[9] This does not mean, however, that the Commission will protect the Sensormatic equipment from interference or give it priority over other radio frequency devices. As Part 15 equipment, the Sensormatic anti-theft system must accept any interference that is received. *See* 47 CFR Section 15.5.

[10] *See* notice of *ex parte* meeting with the Office of Engineering and Technology filed on January 10, 1990, by Warren G. Lavey, attorney for Sensormatic.

[11] Indeed, given the concerns expressed by commenters in this proceeding, it may be that some equipment developers have already been dissuaded from introducing new equipment to the market.

[12] Equipment operating in the band 902-905 MHz can also be manufactured or imported under the former rules until June 23, 1994. *See* 47 CFR Section 15.37(a).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-502

In the Matter of

Amendment of Section 73.202(b), RM-6449
Table of Allotments,
FM Broadcast Stations.
(Winnebago, Nebraska)

MEMORANDUM OPINION AND ORDER

Adopted: May 29, 1990; Released: June 12, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it the petition for reconsideration filed by Gary L. Violet (petitioner) of the *Report and Order*, 4 FCC Rcd 5372 (1989), which dismissed his request to substitute Channel 289C2 for Channel 289A at Winnebago, Nebraska, and modify his construction permit for Station KSUX accordingly.[1] No opposition to the petition for reconsideration was received.[2]

2. The dismissal was based on petitioner's failure to express continuing interest in the channel substitution. In this regard, petitioner states that he does not recall receiving a copy of the *Notice of Proposed Rule Making* and thus was unaware of the comment deadline. However, petitioner states that it remains his intention to apply for Channel 289C2, if allotted to Winnebago.

3. We believe the public interest would be served by substituting Channel 289C2 for Channel 289A at Winnebago, Nebraska, since it could enable Station KSUX to expand its coverage area. Inasmuch as the channel would have been allotted had petitioner submitted a timely expression of interest, we believe that a reversal of our earlier decision is warranted. *See, e.g., Bradenton, Florida*, 2 FCC Rcd 2061 (1987) and *Quartzsite, Arizona*, 51 FR 4925, published February 10, 1986. Channel 289C2 can be allotted to Winnebago in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.4 kilometers (8.3 miles) north to avoid a short-spacing to Station KFMT, Channel 288A, Fremont, Nebraska.[3]

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 26, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Winnebago, Nebraska	289C2

5. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the construction permit of Gary L. Violet for Station KSUX, Winnebago, Nebraska, IS MODIFIED to specify operation on Channel 289C2, in lieu of Channel 289A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That the petition for reconsideration filed by Gary L. Violet IS GRANTED.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Public Notice of the filing of the petition for reconsideration was given on November 24, 1989, Report No. 1802.

[2] A petition for rule making has been received from Sheldon Broadcasting Company, Inc., requesting the substitution of Channel 288C3 for Channel 288A at Sheldon, Iowa (RM-7199). The coordinates specified therein conflict with the Winnebago proposal but, according to Sheldon Broadcasting, were selected pursuant to its belief that the allotment of Channel 289C2 to Winnebago was no longer before the Commission. Sheldon Broadcasting failed to file comments in response to the Public Notice announcing receipt of the Winnebago reconsideration request. However, we have found that a different site restriction can be imposed on the Sheldon allotment which obviates the conflict. Therefore, the Sheldon proposal will be the subject of a separate *Notice of Proposed Rule Making*.

[3] The coordinates for this allotment are North Latitude 42-21-21 and West Longitude 96-29-01. Because this allotment is made as a result of a petition for rule making filed prior to October 2, 1989, the permittee may avail itself of the provisions of Section 73.213(c) of the Commission's Rules. *See* 47 C.F.R. § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-375

In the Matter of

Amendment of Section 73.202(b), RM-6846
Table of Allotments,
FM Broadcast Stations.
(Bozeman, Montana)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 29, 1990; Released: June 12, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 6653 (1989), proposing the allotment of FM Channel 260C1 to Bozeman, Montana, as that community's fourth local FM broadcast service. The *Notice* was issued in response to a petition filed by Northern Sun Corporation (petitioner). Petitioner filed comments reaffirming its interest in the channel. No other comments were received.

2. An engineering analysis confirms that Channel 260C1 can be allotted to Bozeman, Montana, in compliance with the minimum distance separation requirements of the Commission's Rules at the city reference coordinates.[1]

3. In view of the above information, we believe that the public interest would be served by allotting Channel 260C1 to Bozeman, Montana, since this allotment could provide a fourth local FM service.[2] Accordingly, pursuant to Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 26, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Bozeman, Montana	229C1, 236C1
	260C1, *271C2

4. The window period for filing applications will open on **July 27, 1990,** and close on **August 27, 1990.**

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The coordinates for Channel 260C1 are 45-40-54 and 111-02-18. Because the petition for rule making in this proceeding was filed prior to October 2, 1989, applicants for this new allotment may avail themselves of of the provisions of Section 73.213(c) of the Commission's Rules. *See* 47 C.F.R. § 73.213(c).

[2] Of the four FM channels alloted to Bozeman, Channel 271C2 is reserved for noncommercial educational use.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-333

In the Matter of

Amendment of Section 73.202(b),	RM-6678
Table of Allotments,	
FM Broadcast Stations.	
(Camarillo, California)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 1, 1990; Released: June 12, 1990

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 4 FCC Rcd 6168 (1989), proposing the substitution of Channel 240B1 for Channel 240A at Camarillo, California, and modification of the license of Golden Bear Broadcasting, Inc. (petitioner) for Station KZTR-FM, Channel 240A, to specify operation on the higher class channel. Petitioner filed supporting comments in response to the *Notice*. Mar-Com Communications, Inc.[1] and Golden Bear Broadcasting of Ventura, Inc. ("GBBV")[2] each filed comments.

2. We believe the public interest would be served by substituting Channel 240B1 for Channel 240A at Camarillo since it could provide the community with its first wide coverage area FM service. As indicated in the *Notice*, Channel 240B1 can be allotted to Camarillo at the petitioner's suggested site 17.8 kilometers (11.1 miles) west [3] of the community, consistent with the minimum distance separation requirements of the Commission's Rules.[4] Additionally, since Camarillo is located within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence in the allotment by the Mexican government was obtained.

3. Pursuant to the provisions of Section 1.420(g) of the Commission's Rules, we are modifying herein the license of Station KZTR-FM to specify operation on Channel 240B1 in lieu of Channel 240A at Camarillo, California.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 26, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the community listed below, as follows:

City	Channel No.
Camarillo, California	240B1

5. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Golden Bear Broadcasting, Inc. for Station KZTR-FM, Camarillo, California, IS MODIFIED effective **July 26, 1990,** to specify operation on Channel 240B1 in lieu of Channel 240A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] At the time the *Notice* was issued in this proceeding, Mar-Communications, Inc. was the proposed assignee of Station KZTR-FM (BALH-890919EB). However, the assignment was not consummated. *See infra* note 2.

[2] These comments, which note the pending assignment of the license of Station KZTR-FM to Golden Bear Broadcasting of Ventura, Inc. (BALH-900213EE), advise us of its intention to pursue the modification proposal initiated by the petitioner.

[3] Coordinates at the petitioner's suggested site are 34-13-21 and 119-13-48.

[4] Because this allotment is made as a result of a petition for rule making filed prior to October 2, 1989, the licensee may avail itself of the provisions of Section 73.213(c) of the Commission's Rules. *See* 47 CFR § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-284

In the Matter of

Amendment of Section 73.202(b), RM-6492
Table of Allotments,
FM Broadcast Stations.
(Greenwood, Arkansas)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 1, 1990; Released: June 12, 1990

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 4 FCC Rcd 4975 (1989), proposing the substitution of Channel 292C2 for Channel 292A at Greenwood, Arkansas, and modification of the license for Station KAJJ(FM), as requested by Red, White and Blue Communications, to specify operation on the higher power channel.[1] The petitioner's successor-in-interest, KZ Radio, L.P. ("KZ"), filed supporting comments in response to the *Notice*. JEM Broadcasting Company, Inc. and KERM, Inc.[2] each submitted late-filed comments. [3] KZ filed reply comments. No other comments were received.

2. The *Notice* advised that Channel 292C2 could be allotted to Greenwood consistent with the Commission's Rules, provided the transmitter is located at least 25.9 kilometers (16.1 miles) east of the community[4] to avoid short-spacing to Station KKBI(FM), Channel 291C2, Broken Bow, Oklahoma, and to Channel 293C2, Bella Vista, Arkansas.[5]

3. In response to the *Notice*, KZ advises that the request to allot Channel 292C2 to Greenwood was initiated by the prior owner of Station KZKZ-FM. KZ advises that, upon reevaluating the proposal, it now seeks the substitution of Channel 292C3 in lieu of Channel 292C2 at Greenwood in order to avoid the relocation of Station KZKZ-FM to a site further removed from Greenwood, which an operation on Channel 292C2 would require. In this regard, KZ states that consideration of Channel 292C3 would allow it to relocate at a substantially closer site to Greenwood.[6] Thus, KZ claims that its modified proposal would enable it to provide enhanced service to the public, while simultaneously resolving the conflicting interests of certain affected Bella Vista applicants, as indicated in the *Notice*.

4. We have confirmed that Channel 293C3 can be allotted to Greenwood consistent with the Commission's Rules, at the site suggested by KZ. Moreover, use of the newly specified transmitter site will indeed obviate a conflict with the applications tendered for filing at Bella Vista.

5. Based on the above information, we believe the public interest would be served by substituting Channel 292C3 for Channel 292A at Greenwood, Arkansas, since it could provide the community with its first expanded coverage area broadcast station. Therefore, and in accordance with the provisions of Section 1.420(g) of the Commission's Rules, we are modifying the license for Station KZKZ-FM to specify operation on Channel 292C3 in lieu of Channel 292A, as requested.[7]

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 26, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the community listed below, as follows:

City	Channel No.
Greenwood, Arkansas	292C3

7. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license for Station KZKZ-FM, IS MODIFIED effective **July 26, 1990,** to specify operation on Channel 292C3 in lieu of Channel 292A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

8. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND a copy of this *Order*, by regular mail, to the applicants for Channel 293C2 at Bella Vista, Arkansas, as follows: Hendren Radio, Route 5, Highway 72 East, Gravette, AR 72736 (File No. BPH-880701MT), JEM Broadcasting Company, Inc., 216 North Main Street, Bentonville, AR 72712 (File No. BPH-880714NT), and KERM, Inc., 212 North Second Street, Rogers, AR 72756 (File No. BPH-880712MJ).

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Subsequent to the adoption of the *Notice* in this proceeding, the Commission granted an application (BALH-891124EB) assigning the license of KAJJ(FM), which was consummated on May 17, 1989. The call letters of the station were thereafter changed to KZKZ-FM.

[2] JEM and KERM are two of three applicants for Channel 293C2 at Bella Vista, Arkansas. All three applicants on file for Channel 293C2 at Bella Vista were served with copies of the *Notice* to elicit their comments.

[3] The late-filed comments of JEM and KERM each failed to state a reason for their untimeliness and were not accompanied by a request for their acceptance. Thus, in accordance with Section 1.415(d) of the Commission's Rules, we will not accept the late filings.

[4] Coorinates proposed in the notice for Channel 292C2 at Greenwood are 35-12-25 and 93-58-25.

[5] The *Notice* also announced that, at the time this proposal was filed, no applications were on file at the Commission for Channel 293C2 at Bella Vista. However, three applications were subsequently filed (File Nos. BPH-880712MJ, BPH-880714NT and BPH-880701MT), two of which are short-spaced to the proposal to substitute Channel 292C2 for Channel 292A at Greenwood. After determining the unavailability of other channels to accommodate either Greenwood or Bella Vista, we served the applicants with copies of the *Notice* advising them that amendment of their applications may be required in the event Channel 292C2 is allotted to Greenwood. The Bella Vista applicants were also invited to file comments.

[6] KZ's engineering exhibit indicates that a transmitter site for Channel 292C3, located at least 7.9 kilometers (4.9 miles) southeast of Greenwood at coordinates 35-10-45 and 94-11-00, meets the minimum distance separation requirements to Channel 293C2 at Bella Vista at coordinates 36-18-35 and 94-27-02, and to the sites specified by the applicants, as follows: 36-18-21 and 94-27-29 (BPH-880701MT); 36-13-10 and 94-25-00 (BPH-880714NT); 36-16-08 and 94-24-03 (BPH-880712MJ). Use of KZ's suggested site also meets the minimum distance spacing requirements to the site specified in the construction permit issued for Station KKBI(FM), Channel 291C2, Broken Bow, Oklahoma, at coordinates 34-14-45 and 94-46-58.

[7] Because this allotment is made as a result of a petition for rule making filed prior to October 2, 1989, the licensee may avail itself of the provisions of Section 73.213(c) of the Commission's rules. *See* 47 CFR § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-277

In re Applications of

GLORIA BELL BYRD (hereafter "Byrd")	File No. BPH-880912MC
DR. STEPHEN HOLLIS (hereafter "Hollis")	File No. BPH-880914MJ
QMS BROADCASTING, INC. (hereafter "QMS")	File No. BPH-880914MS
MICHAEL A. AND CYNTHIA L. KULISKY (hereafter "Kulisky")	File No. BPH-880914MZ
T.D.L. RADIO LIMITED PARTNERSHIP (hereafter "TDL")	File No. BPH-880915MC
BANYAN BROADCASTING OF ORMOND-BY-THE-SEA, FLORIDA, INC. (hereafter "Banyan")	File No. BPH-880915MD
ORMOND-BY-THE-SEA BROADCASTERS, INC. (hereafter "Ormond")	File No. BPH-880915MF
ORMOND COMMUNICATIONS, INC. (hereafter "OCI")	File No. BPH-880915MG
ORMOND BROADCASTING, INC. (hereafter "OBI")	File No. BPH-880915MI
DEHARO RADIO, LTD., A FLORIDA LIMITED PARTNERSHIP (hereafter "deHaro")	File No. BPH-880915MJ
O.B.S. RADIO LIMITED PARTNERSHIP (hereafter "OBS")	File No. BPH-880915MN
SALLY S. DILUCENTE (hereafter "DiLucente")	File No. BPH-880915MP
B H BROADCASTING, INC. (hereafter "BH")	File No. BPH-880915MQ
MCFAYDEN BROADCASTING LIMITED PARTNERSHIP (hereafter "McFayden")	File No. BPH-880915MR
George M. Ragsdale et. al. d/b/a VOLUSIA BROADCASTING COMPANY (hereafter "Volusia")	File No. BPH-880915MS
AGAPE OF CENTRAL FLORIDA, INC. (hereafter "Agape")	File No. BPH-880915MT
SUNAO BROADCASTING COMPANY, INC. (hereafter "Sunao")	File No. BPH-880915MU
JOY BRYON (hereafter "Bryon")	File No. BPH-880915MV
GREENE COMMUNICATIONS, LTD. (hereafter "Greene")	File No. BPH-880915MW
ROBIN GIBSON (hereafter "Gibson")	File No. BPH-880915MZ
MID-FLORIDA BROADCASTING, INC. (hereafter "Mid-Florida")	File No. BPH-880915NA
KLT BROADCASTING COMPANY (hereafter "KLT")	File No. BPH-880915NL

For Construction Permit
for a New FM Station on Channel 239A (95.7 MHz)
in Ormond-By-The-Sea, Florida

HEARING DESIGNATION ORDER

Adopted: May 15, 1990; Released: June 12, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *deHaro*. On November 22, 1989, deHaro filed a petition for leave to amend, accompanied by an amendment to its application, to specify a new transmitter site. DeHaro contends that specification of an alternate transmitter site was necessary, due to the fact that the Federal Aviation Administration advised the applicant that its original site would be a hazard to air navigation. However, at the time deHaro filed the instant application, it had an application on file for a new FM station, BPH-880406MI, in Edgewater, Florida, which was designated for hearing in MM Docket 90-167. DeHaro's application, as amended, conflicts with the Commission's multiple ownership rule, 47 C.F.R. Section 73.3555, in that there is 3.16 mV/m (70 dBu) contour overlap between the two proposed facilities. Consequently, pursuant to Section 73.3573(b), the amendment is a "suicide" amendment since its acceptance would constitute a violation of the Commission's Rules and would result in the dismissal of the deHaro application in the Ormond-By-The-Sea proceeding. Therefore, the amendment will be returned and the Commission will consider deHaro's proposal as originally filed. Furthermore, in light of the Federal Aviation Administration's determination regarding the original site, an appropriate issue will be specified.

3. *OBS*. Section II, Item 4 of FCC Form 301 (October 1986) requires that an applicant specify its address (number, street, city, state) as well as the home address of each of its principals. OBS has not completed Item 4 correctly. OBS's application gives a post office box number as the residence address for Vincent E. McGough, Jr. Accordingly, OBS must submit an amendment which gives all the information required by Section II, Item 4 to the presiding Administrative Law Judge after this Order is released.

4. Vincent McGough, the sole general partner of OBS, is employed by station WWLV(FM), in Daytona Beach, Florida, as an account executive. McGough has indicated his intent to terminate his relationship with WWLV(FM) in the event of grant of the referenced application. Accordingly, in the event of grant of OBS's application, McGough will be required to sever all connections with WWLV(FM) prior to the commencement of program test authority.

5. *DiLucente*. The engineering data submitted by DiLucente shows that her proposal would not provide a 3.16 mV/m signal to the entire proposed city of license as required by Section 73.315(a) of the Commission Rules. DiLucente has indicated that her proposal would provide coverage to over 98 percent of the Ormond-by-the-Sea city limits and, therefore, requests a waiver of the rule. However, the FM Branch does not require waiver of this requirement unless the proposed 3.16 mV/m coverage falls below 80 percent of the area of the principal community. *See John R. Hughes*, 50 Fed. Reg. 5679 (February 11, 1985). *See also Southwest Communications, Inc.*, released July 16, 1986 (letter from Chief, FM Branch, reference 8920-HVT). The staff engineering study reveals that DiLucente's 3.16 mV/m contour is in substantial compliance with this requirement in that her contour would cover at least 80 percent of Ormond-by-the-Sea. Accordingly, the waiver request filed by DiLucente will be dismissed as moot.

6. *Greene*. Section II, Item 4(4), FCC Form 301, requires the applicant to state the "number of shares or nature of the partnership interest." This question refers to the equity ownership of each principal in the applicant. Greene's application does not include this information. Accordingly, Greene will be required to submit an amendment which specifies the general partner's equity in the applicant to the presiding Administrative Law Judge within 30 days after this Order is released.

7. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and BH have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by BH would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

8. *Agape*. Section II, Item 4, FCC Form 301, requires information regarding the applicant and, if other than a natural person, its officers, directors, stockholders and partners with attributable interests. Agape has not completed Item 4 with respect to Ted Hepburn, a non-voting shareholder. Accordingly, Agape will be required to submit an amendment which contains the requisite data for Mr. Hepburn, as well as any other parties to the application, to the presiding Administrative Law judge within 30 days after this Order is released.

9. In response to Section III, FCC Form 301, Hollis, BH and Gibson each indicated that it was not financially qualified to construct and operate its requested facility for three months without revenue. However, each of these applicants indicated that financial arrangements were being made and that notification would be forthcoming when the arrangements were completed. To date, no amendment has been received from Gibson updating his financial status. On September 6, 1989, and March 30, 1990, respectively, Hollis and BH each filed an untimely amendment certifying that it is now financially qualified. We note, however, that in the Commission's *Report and Order* in MM Docket No. 84-850, 50 Fed. Reg. 19936 (May 13, 1985) the Commission adopted strict rules governing the acceptance of amendments to FM applications. *See also* 47 C.F.R. § 73.3522(a)(6). That rule provides that predesignation amendments filed subsequent to the 30 day amendment period as of right will not be considered if they attempt to cure acceptance or grantability defects. Financial qualifications are grantability defects. Therefore, Hollis' September 6, 1989 amendment and BH's March 30, 1990 amendment as they relate to each applicant's financial status will be returned as untimely. Accordingly, a financial qualifications issue will be specified against Hollis, BH and Gibson.

10. Each of the applicants below has petitioned for leave to amend its application on the dates show. The accompanying amendments were filed after the last date for filing amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for

filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	AMENDMENTS FILED
TDL	November 14, 1989
Banyan	August 8, 1989
OBI	January 30, 1990
DiLucente	March 23, 1989; May 15, 1989; July 14, 1989; August 24, 1989; October 16, 1989
McFayden	December 30, 1988
Agape	October 16, 1989; December 7, 1989
Greene	March 27, 1989

11. On December 18, 1989 and May 2, 1989, respectively, Banyon and Greene petitioned for leave to amend their applications after the last day for filing amendments as of right. The subject amendments were accompanied by the good cause showing required by 47 C.F.R. § 73.3522(a)(2); consequently, the amendments are accepted for filing. However, an applicant may not improve its comparative advantage after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

12. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

13. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

14. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by BH and deHaro would constitute a hazard to air navigation.

2. To determine with respect to Hollis, BH and Gibson each, whether the applicant is financially qualified.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

15. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

16. IT IS FURTHER ORDERED, That, in the event of grant of OBS's application, McGough will be ordered to divest himself of all interest in and sever all connections with Stations WWLV(FM), Daytona Beach, Florida, prior to the commencement of program test authority.

17. IT IS FURTHER ORDERED, That OBS shall submit an amendment which contains the information required by Section II, Item 4 of FCC Form 301, to the presiding Administrative Law Judge within 30 days after the release of this Order.

18. IT IS FURTHER ORDERED, That DiLucente's request for waiver of 47 C.F.R. § 73.315(a) IS DISMISSED AS MOOT.

19. IT IS FURTHER ORDERED, That Greene shall submit an amendment which contains the information requested in paragraph 6, above, to the presiding Administrative Law Judge within 30 days after this Order is released.

20. IT IS FURTHER ORDERED, That Hollis' September 6, 1989 Petition for Leave to Amend, deHaro's November 22, 1989 Petition for Leave to Amend and BH's March 30, 1990 Petition for Leave to Amend ARE DENIED and the accompanying amendments ARE HEREBY RETURNED. In addition the Petitions for Leave to Amend filed by the applicants in paragraph 10 and 11, above, ARE GRANTED and the accompanying amendments ARE ACCEPTED to the extent indicated herein.

21. IT IS FURTHER ORDERED, That Agape submit an amendment which contains the information requested in paragraph 8, above, to the presiding Administrative Law Judge within 30 days after this Order is released.

22. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

23. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

24. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-279

In re Applications:

MACON RADIO ASSOCIATES LIMITED PARTNERSHIP (hereafter MRA)	File No. BPH-880421MD
NANCY S. COOPER d/b/a COOPER COMMUNICATIONS (hereafter Cooper)	File No. BPH-880421MN
SOUTHEAST COMMUNICATIONS LIMITED PARTNERSHIP (hereafter Southeast)	File No. BPH-880421MO
MBM BROADCASTING COMPANY (hereafter MBM)	File No. BPH-880421MX
OCMULGEE RADIO PARTNERS (hereafter Ocmulgee)	File No. BPH-880421NJ
PAMELA R. JONES (hereafter Jones)	File No. BPH-880421NL
GKT COMMUNICATIONS OF GEORGIA LIMITED PARTNERSHIP (hereafter GKT)	File No. BPH-880421NN
CHIZOMAN, INC. (hereafter Chizoman)	File No. BPH-880421NF (Dismissed Herein)
MIRACLE MACON RADIO LIMITED PARTNERSHIP (hereafter Miracle)	File No. BPH-880421NU (Dismissed Herein)

For a Construction Permit
For a New FM Station in Macon, Georgia
On Channel 222A

HEARING DESIGNATION ORDER

Adopted: May 15, 1990; Released: June 12, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Preliminary Matters: Chizoman.* On April 10, 1990, Chizoman filed a Request for Voluntary Dismissal of its application. That request will herein be granted.

3. *Miracle.* On March 27, 1990, Miracle filed Notice of Voluntary Dismissal. Accordingly, Miracle's application will herein be dismissed.

4. *Air Hazard.* Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and Southeast have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by Southeast would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

5. *MRA.* The height above mean sea level (AMSL) for MRA'a proposed site is listed in Section V-B, Item 7 of its application as 217 meters. This value conflicts with the respective value of 215.8 meters on file with the FAA. Accordingly, MRA shall file an amendment with the presiding Administrative Law Judge, within 30 days of the release of this Order, which corrects or clarifies this discrepancy. In addition, an air hazard issue will be specified below.

6. *Southeast.* The Southeast application being considered in this proceeding conflicts with a pending Rule Making proceeding to add Channel 222A to the list of allotments to serve Bostwick, Georgia (Docket No. 89-566). Southeast's application was filed before the petition for Rule Making had been filed. Consequently, Southeast's application met all the spacing criteria and was accepted for filing. Accordingly, we will designate this application for hearing. However, if the construction permit is issued to Southeast, it will be conditioned upon the outcome of the Bostwick, GA, Channel 222A Rule Making proceeding.

7. *Ocmulgee.* Section III of FCC Form 301 requires each applicant to answer whether they have sufficient net liquid assets on hand or available from committed sources to construct and operate the requested facility for a period of three months without revenue. When Ocmulgee filed its application, it answered "no" to Section III. Ocmulgee, however, added a statement that certification will be supplied by an amendment. To date, the Commission has not yet received any such amendment. Accordingly, an issue will be specified as to Ocmulgee's financial qualifications.

8. *GKT.* On October 13, 1989, GKT amended its application to specify that general partner Karla J. Heath has accepted full-time employment at WMAZ-TV, Macon, Georgia. The amendment further specifies that Ms. Heath will terminate her employment should GKT be awarded the construction permit. The amendment does not, however, indicate in what capacity Ms. Heath was hired by station WMAZ-TV. Accordingly, GKT will be required to

amend its application with the presiding Administrative Law Judge identifying Ms. Heath's employment so the Judge may add a divestiture condition, if necessary.

9. *Other Matters*. The applicants below have petitioned for leave to amend their application on the dates shown. The accompanying amendments were filed after the last date for filing amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	AMENDMENTS FILED
MRA	November 14, 1988; May 23, 1989; January 16, 1990; April 30, 1990
MBM	September 26, 1988; November 16, 1988; February 1, 1989; March 21, 1989; December 11, 1989; January 22, 1990
Jones	March 14, 1989; March 19, 1990; April 23, 1990
GKT	October 13, 1989

10. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

11. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

12. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower heights and locations proposed by MRA and Southeast would constitute a hazard to air navigation.

2. To determine with respect to Ocmulgee, whether the applicant is financially qualified.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

13. IT IS FURTHER ORDERED, That the application filed by Chizoman IS HEREBY DISMISSED.

14. IT IS FURTHER ORDERED, That the application filed by Miracle IS HEREBY DISMISSED.

15. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

16. IT IS FURTHER ORDERED, That MRA file an amendment with the presiding Administrative Law Judge within 30 days of the release of this Order correcting or clarifying the discrepancy between Section V-B, Item 7 of MRA's application submitted with the FCC and the information on file with the FAA.

17. IT IS FURTHER ORDERED, That if the construction permit is issued to Southeast, it will be conditioned upon the outcome of the Bostwick, Georgia, Channel 222A Rule Making proceeding (Docket No. 89-566).

18. IT IS FURTHER ORDERED, That GKT amend its application within 30 days of the release of this Order with the presiding Administrative Law Judge specifying what position Karla J. Heath holds with respect to her employment with WMAZ-TV.

19. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by MRA, MBM, Jones and GKT ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

20. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

21. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

22. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN. Docket No. 90-54
GEN. Docket No. 80-113

In the Matter of

Amendment of Parts 21, 43, 74, 78, and 94 of the Commission's Rules, Pertaining to Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands Affecting:

Private Operational-Fixed Microwave Service, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, and Cable Television Relay Service

ORDER EXTENDING TIME FOR FILING REPLY COMMENTS

Adopted: June 5, 1990; Released: June 5, 1990

By the Chief, Mass Media Bureau

1. The Commission grants the request of the Wireless Cable Association, Inc. (WCA) for an extension of the reply comment deadline in the above-captioned proceeding to June 20, 1990. The Commission adopted a *Notice of Proposed Rule Making and Notice of Inquiry* (*Notice*) [1] in this proceeding on February 8, 1990, establishing a comment deadline of April 23, 1990, and a reply comment deadline of May 23, 1990. These deadlines were extended in a later decision (5 FCC Rcd 2730, 1990) to May 7, 1990, for comments and June 6, 1990, for reply comments.

2. WCA seeks a further extension of the reply comment period because of the complexity of the issues involved in the proceeding, and because of the number and variety of interests commenting in response to the *Notice*. The Commission grants the request in order to establish the most comprehensive record possible on which to base a decision. A further extension of the reply comment date is not contemplated.

3. Accordingly, IT IS ORDERED that the date for filing reply comments in the above-captioned proceeding IS EXTENDED to and including June 20, 1990.

4. This action is taken pursuant to authority found in Sections 4(i), 4(j), 303(r) of the Communications Act of 1934, as amended, and Sections 0.61 and 0.283 of the Commission's Rules.

5. For further information concerning this proceeding, contact Bruce Romano, Policy and Rules Division, Mass Media Bureau (202) 632-5414.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

FOOTNOTE

[1] *See Notice of Proposed Rule Making and Notice of Inquiry* in Gen. Docket No. 90-54 and Gen. Docket No. 80-113, FCC 90-60, 5 FCC Rcd 971 (1990)

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

PROGRESSIVE CELLULAR III B-2 — File No. 10008-CL-P-317-A-88

For construction authority to establish a new cellular system to operate on frequency block A in the Domestic Public Cellular Radio Telecommunications Service to serve Market No. 317, Alaska 3--Haines Rural Service Area

and

RADIOPHONE CORPORATION — File No. 10216-CL-P-413-A-88

For construction authority to establish a new cellular system to operate on frequency block A in the Domestic Public Cellular Radio Telecommunications Service to serve Market No. 413, Iowa 2--Union Rural Service Area

MEMORANDUM OPINION AND ORDER

Adopted: June 6, 1990; Released: June 7, 1990

By the Chief, Mobile Services Division:

I. BACKGROUND AND CONTENTIONS

1. On April 3, 1990, the Commission issued a Public Notice, Mimeo No. 2438, announcing that the Commission would conduct lotteries on June 13, 1990, to select cellular radio applications to process in five Rural Service Areas (RSAs). In each of these markets, lotteries had been held previously, but the winning applications had been found defective under the Commission's rules and dismissed. Two of the dismissed applicants were Progressive Cellular III B-2 (Progressive) and Radiophone Corporation (Radiophone), (collectively Petitioners), whose applications are captioned above. Progressive and Radiophone have filed a petition for reconsideration and an application for review, respectively, of their dismissals (collectively Petitions), which are pending. Petitioners have requested a stay of the non-wireline lotteries for markets 317 and 413 which are scheduled for June 13, 1990, pending final review of their dismissals.

2. The Petitioners claim that they will be irreparably harmed if the June 13, 1990 lottery is held. The Petitioners state that if the Commission conducts the scheduled lottery, it is possible that the Commission will grant a construction permit to other applicants in their respective markets before a final determination is made on their Petitions. Radiophone argues that such a grant would require it to both appeal its allegedly wrongful dismissal and to argue for the dismissal of the application selected in the June 13, 1990 lottery, thus incurring additional expenses. Radiophone notes that these additional expenses would not be incurred if the June 13 lottery is stayed pending action on their Petitions. Radiophone also filed a supplement to its motion for stay on June 1, 1990, in which it contends that the Commission should not hold a non-wireline lottery for RSA Market 413 until it addresses Radiophone's arguments concerning the Commission's alleged failure to comply with certain provisions of the Paperwork Reduction Act (PRA) in adopting and enforcing rules concerning the submission of maps by RSA applicants. Progressive contends that if a re-lottery is held for the Alaska 3 RSA market and another applicant is elevated to the status of permittee for that market, and Progressive ultimately prevails in the appeal of its dismissal, Progressive would be severely prejudiced by the claims of such other winner of the re-lottery. In this regard, Progressive argues that the second lottery winner could not be expected to await passively the results of Progressive's appeal, but would enter the legal fray as a party in interest, thus adding to Progressive's substantial burden as it pursues its administrative and judicial appeals.

II. DISCUSSION

3. The Petitioners have failed to make a sufficient showing to justify the extraordinary relief they seek. Progressive and Radiophone have not shown that they will suffer irreparable injury if the lottery takes place as scheduled. *See Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) ("It is . . . well settled that economic loss does not, in and of itself, constitute irreparable harm."). The lottery procedure neither constitutes, nor automatically results in, the grant of a construction permit. Rather, it initiates a process which will require some time before the issuance of a construction permit. Even after that process is completed, it is clear that other corrective relief is available should the Petitioners wish to challenge the grant of a construction authorization to a lottery winner by filing a petition for reconsideration or an application for review of the grant. *See Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958). The courts have recognized that license grants which are challenged by litigation are subject to that litigation and may be undone if the basis of the grant is reversed as a result of the outcome of the litigation. *See, e.g., Alianza Federal de Mercedes v. FCC*, 539 F.2d 732, 736 (D.C. Cir. 1976). Moreover, whether or not a subsequent construction authorization is challenged, it would be conditioned on the outcome of any pending proceedings regarding the dismissal of prior lottery winners. There is, therefore, no basis for the Petitioners' assertion that the Commission would be unable to provide them with adequate relief should they ultimately prevail on the merits. Accordingly, we conclude that the Petitioners have failed to demonstrate that they will suffer irreparable harm, as is required for the grant of a stay. *See Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977). We further note that granting a stay would harm the public in gen-

eral and other interested parties because a delay of the lottery would deny expeditious service to the public if Petitioners' appeals turn out to be unsuccessful.

4. Accordingly, IT IS ORDERED that the requests for stay filed by Progressive Cellular III B-2 (File No. 10008-CL-P-317-A-88) and Radiophone Corporation (File No. 10216-CL-P-413-A-88) ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Mobile Services Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

BellSouth Transmittal No. 294
Telephone Companies
Revisions to Tariff F.C.C. No. 4

ERRATUM

Released: June 13, 1990

1. On May 2, 1990, the Common Carrier Bureau released an Order, DA 90-655, in the the above-captioned proceeding. The following correction is made to that Order.

2. Footnote 1 of the Order should read as follows:

> The relevant language in BellSouth's tariff implies that it accepts as proof of authorization LOAs signed by any member of a household or business with apparent authority to authorize a PIC change.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

GRAPHNET, INC. File No. I-T-C-90-073

Application for authority to lease and operate facilities for direct telex service between the U.S. and Czechoslovakia

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: June 6, 1990; Released: June 13, 1990

By the Chief, International Facilities Division:

1. The above-captioned application, filed on February 15, 1990 and supplemented by letter of April 30, 1990 by Graphnet, Inc., requests authority pursuant to Section 214 of the Communications Act of 1934, as amended, to lease and operate satellite and connecting facilities for direct telex service between the U.S. and Czechoslovakia. The application was placed on public notice on March 21, 1990. No comments were received. Upon consideration of the application, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct telex service to Czechoslovakia by Graphnet.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-90-073 IS GRANTED and Graphnet is authorized to:

a. lease from Comsat and operate one 9600 baud IBS channel between the Etam, West Virginia earth station and an appropriate satellite over the Atlantic Ocean, connecting with a similar channel between the satellite and an earth station in Poland, furnished by Graphnet's correspondent in Czechoslovakia;

b. lease from AT&T and operate one 9600 baud IBS channel in the Etam, West Virginia earth station;

c. lease and operate connecting facilities between the Etam, West Viriginia earth station and Graphnet's New York operating office; and

d. use said facilities to provide telex service between the U.S. and Czechoslovakia.

3. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to ensure nondiscriminatory use of, and equitable access to, the communications satellite system.

4. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of an operating agreement between Graphnet and its correspondent in Czechoslovakia, and a copy of the agreement shall be filed with the Commission within 30 days of its execution.

5. IT IS FURTHER ORDERED that the applicant shall file semi-annual circuit reports pursuant to Section 63.10(b) of the Commission's Rules, 47 C.F.R. Section 63.10(b) (October 1, 1989).

6. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. Section 43.61 (October 1, 1989).

7. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

PARAGON SYSTEMS INTERNATIONAL, INC. File No. I-T-C-90-074

Application for authority to operate as an international resale carrier.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: June 6, 1990; Released: June 13, 1990

By the Chief, International Facilities Division

1. The above-captioned application, filed on March 13, 1990 by Paragon Systems International, Inc. (PSI), requests authority pursuant to Section 214 of the Communications Act of 1934, as amended, to resell the switched message telephone services of existing common carriers to provide international switched voice service between the U.S. and various overseas points. The application was placed on public notice on March 21, 1990. No comments were received.

2. The applicant is a start-up company which proposes to resell international switched voice services in competition with other common carriers already providing resale of such services. PSI has filed information required by Section 63.01 of the Commission's Rules. In authorizations of new entrants over the past decade, the Commission has recognized that increased competition in international markets is beneficial.[1] We find that the market will support additional carriers and that the added competition will be in the public interest.[2]

3. For the foregoing reasons, IT IS CERTIFIED that the present and future public convenience and necessity require the provision of international switched voice services to the general public by PSI.

4. Accordingly, IT IS ORDERED that application File No. I-T-C-90-074, IS GRANTED, and PSI is authorized to provide international switched voice services by the resale of the international switched voice services set forth in AT&T's Tariff F.C.C. No. 1 and 2, MCI's Tariff F.C.C. No. 1, US Sprint's Tariffs F.C.C. Nos. 1 and 2 and Allnet's Tariff F.C.C. No. 1, between the United States and the points listed in those tariffs.

5. Copies of any operating agreements entered into between the applicant and its correspondents shall be filed with the Commission within 30 days of their execution.

6. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

7. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61 (October 1, 1989).

8. This order is issued under Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] *See, e.g.*, the cases cited in the Teltec Saving Communications Co., File No. I-T-C-86-062, Mimeo No. 3548, (released April 4, 1986) at n.2.

[2] FCC v. RCA Communications, Inc., 346 U.S. 86 (1953); Mackay Radio and Telegraph Co., 28 FCC 231 (1960).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

HOME OWNERS LONG DISTANCE, INC. File No. I-T-C-90-086

Application for authority to operate as an international resale carrier.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: June 6, 1990; Released: June 13, 1990

By the Chief, International Facilities Division

1. The above-captioned application, filed on March 2, 1990 by Home Owners Long Distance Inc. (HOLD), requests authority pursuant to Section 214 of the Communications Act of 1934, as amended, to resell the switched message telephone services of existing common carriers to provide international switched voice service between the U.S. and various overseas points. The application was placed on public notice on April 11, 1990. No comments were received.

2. The applicant is a non-dominant domestic resale common carrier. It now proposes to resell international switched voice services in competition with other common carriers already providing resale of such services. In authorizations of new entrants over the past decade, the Commission has recognized that increased competition in international markets is beneficial.[1] We find that the market will support additional carriers and that the added competition will be in the public interest.[2]

3. For the foregoing reasons, IT IS CERTIFIED that the present and future public convenience and necessity require the provision of international switched voice services to the general public by HOLD.

4. Accordingly, IT IS ORDERED that application File No. I-T-C-90-086, IS GRANTED, and HOLD is authorized to provide international switched voice services by the resale of the international switched voice services set forth in AT&T's Tariff F.C.C. No. 1, MCI's Tariff F.C.C. No. 1 and US Sprint's Tariff F.C.C. No. 1 between the United States and the points listed in those tariffs.

5. Copies of any operating agreements entered into between the applicant and its correspondents shall be filed with the Commission within 30 days of their execution.

6. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

7. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61 (October 1, 1989).

8. This order is issued under Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] *See, e.g.*, the cases cited in the Teltec Saving Communications Co., File No. I-T-C-86-062, Mimeo No. 3548, (released April 4, 1986) at n.2.

[2] FCC v. RCA Communications, Inc., 346 U.S. 86 (1953); Mackay Radio and Telegraph Co., 28 FCC 231 (1960).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

KC COMMUNICATIONS — File No. I-T-C-90-089

Application for authority to operate as an international resale carrier.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: June 6, 1990; Released: June 13, 1990

By the Chief, International Facilities Division

1. The above-captioned application, filed on March 23, 1990 by KC Communications (KCC), requests authority pursuant to Section 214 of the Communications Act of 1934, as amended, to resell the switched message telephone services of existing common carriers to provide international switched voice service between the U.S. and various overseas points. The application was placed on public notice on April 18, 1990. No comments were received.

2. The applicant is a non-dominant domestic resale common carrier. It now proposes to resell international switched voice services in competition with other common carriers already providing resale of such services. In authorizations of new entrants over the past decade, the Commission has recognized that increased competition in international markets is beneficial.[1] We find that the market will support additional carriers and that the added competition will be in the public interest.[2]

3. For the foregoing reasons, IT IS CERTIFIED that the present and future public convenience and necessity require the provision of international switched voice services to the general public by KCC.

4. Accordingly, IT IS ORDERED that application File No. I-T-C-90-089, IS GRANTED, and KCC is authorized to provide international switched voice services by the resale of the international switched voice services set forth in MCI's Tariff F.C.C. No. 1 between the United States and the points listed in those tariffs.

5. Copies of any operating agreements entered into between the applicant and its correspondents shall be filed with the Commission within 30 days of their execution.

6. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

7. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61 (October 1, 1989).

8. This order is issued under Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] *See, e.g.*, the cases cited in the Teltec Saving Communications Co., File No. I-T-C-86-062, Mimeo No. 3548, (released April 4, 1986) at n.2.

[2] FCC v. RCA Communications, Inc., 346 U.S. 86 (1953); Mackay Radio and Telegraph Co., 28 FCC 231 (1960).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

County of San Bernardino
Licensee of Stations
WNNB562/579

ORDER

Adopted: June 1, 1990; Released: June 13, 1990

By the Commission:

1. On December 28, 1989, the Chief of the Private Radio Bureau (Bureau), acting pursuant to delegated authority, adopted an Order denying a Petition for Reconsideration (Petition) of the July 6, 1989, developmental licenses issued to the County of San Bernardino by the Bureau's Licensing Division.[1] The Petition was filed by the American SMR Network Association, Inc. (ASNA). The Commission now has before it for consideration ASNA's February 7, 1990, Application for Review of the Bureau's Order.

2. The Application for Review essentially restates the arguments made in ASNA's original Petition, which were thoroughly addressed in the Bureau's Order. We have reviewed substantively the Bureau's Order denying ASNA's original Petition and find no error. Accordingly, IT IS ORDERED that pursuant to Section 1.115(g) of the Commission's Rules, 47 C.F.R. § 1.115(g), the Application for Review IS DENIED and the Bureau's action IS AFFIRMED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTE

[1] Requests of Waivers of Part 90 of the Commission's Rules by the County of San Bernardino to Operate A County-Wide Public Safety Communication System in the 800 MHz Band, File Nos. 569744-560750, 2 FCC Rcd 6721 (1987).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-23

In the Matter of

Amendment of Section 73.202(b),	RM-6616
Table of Allotments,	RM-6748
FM Broadcast Stations.	
(Springfield and Tallahassee,	
Florida)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 30, 1990; Released: June 13, 1990

By the Deputy Chief, Policy and Rules Division:

1. At the request of Royal Palm Communications, Inc. ("Royal"), licensee of Station WRBA(FM), Channel 240A, Springfield, Florida, the Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 1445 (1989), proposing the substitution of Channel 240C1 for Channel 240A at Springfield, Florida, and modification of the license for Station WRBA(FM) to specify Channel 240C1. In addition, the *Notice* proposed the substitution of Channel 241A for Channel 240A at Tallahassee, Florida, and modification of the license for Station WTMG(FM) to specify Channel 241A. Royal filed comments and reply comments supporting the allotment to Springfield. HVS Partners ("HVS"), licensee of Station WTMG(FM), Channel 240A, Tallahassee, Florida, filed a counterproposal requesting the substitution of Channel 241C2 for Channel 240A at Tallahassee, and the substitution of Channel 240C2 for Channel 240A at Springfield.[1] HVS filed an erratum and supplement to its counterproposal. Royal filed a motion for leave to accept response to HVS's supplement to counterproposal and comments. Gary Burns Inc. ("Burns"), successor in interest to HVS, filed a "Notification of Substitution of Parties." Styles Broadcasting Company, Inc. ("Styles"), successor in interest to Royal, and Burns filed a joint request to defer action pending settlement. Styles filed a motion for leave to withdraw its proposal and support Burn's counterproposal.

2. HVS, in its counterproposal states that both Stations WRBA and WTMG should be upgraded, since the original proposal to upgrade Station WRBA to a class C1 station would not result in any service to underserved areas. HVS believes the public interest would be better served by adoption of its proposal which will result in expanded service from two stations. In its supplement to the counterproposal, HVS states that the relative merits of the conflicting channel allotment proposal such as service to underserved areas, the provision of a first local service or first competitive service are not involved here.

3. In its request to withdraw its proposal to allot Channel 240C1 to Springfield, Styles supports the counterproposal to upgrade both Station WRBA at Springfield and WTMG at Tallahassee to Class C2 status. Styles also states that since both stations would receive an upgrade, Burns would not be entitled to reimbursement from Styles for its change in channel.

4. In view of Styles' interest in applying for Channel 240C2 rather than 240C1 at Springfield, there is no impediment to upgrading Station WTMG(FM) at Tallahassee. In addition, Styles will not be required to reimburse Burns for the change in channel at Tallahassee, since both Stations WRBA and WTMG will be upgraded in this proceeding.

5. Based on the above information, we believe the public interest would be served by substituting Channel 240C2 for Channel 240A at Springfield, and modifying the license of Station WRBA(FM) to specify operation on Channel 240C2, and by substituting Channel 241C2 for Channel 240A at Tallahassee, and modifying the license of Station WTMG(FM) to specify operation on Channel 241C2. Channel 240C2 can be substituted for Channel 240A at Springfield in compliance with the minimum distance separation requirements with a site restriction 5.0 kilometers (3.1 miles) north at its currently licensed site.[2] Channel 241C2 can be substituted for Channel 240A at Tallahassee in compliance with the minimum distance separation requirements of the Commission's rules with a site restriction of 24.5 kilometers (15.2 miles) south. [3] As proposed, we shall also modify the license for Station WRBA(FM) to specify operation on Channel 240C2, and the license for Station WTMG(FM) to specify operation on Channel 241C2.

6. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 30, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Springfield, Florida	240C2, 270A
Tallahassee, Florida	235C, 241C2, 255C1, 276A, 281C, 291A

7. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WRBA(FM), Springfield, Florida, IS MODIFIED, to specify operation on Channel 240C2 in lieu of Channel 240A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

8. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WTMG(FM), Tallahassee, Florida, IS MODIFIED, to specify operation on Channel 241C2 in lieu of Channel 240A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Public Notice of the counterproposal was given on May 4, 1989, Report No. 1778 (RM-6748).

[2] The coordinates for Channel 240C2 at Springfield are North Latitude 30-12-12 and West Longitude 85-36-57.

[3] The coordinates for Channel 241C2 at Tallahassee are North Latitude 30-13-34 and West Longitude 84-15-00.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-476

In the Matter of

Amendment of Section 73.202(b), RM-6969
Table of Allotments,
FM Broadcast Stations.
(El Dorado, Kansas)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 29, 1990; Released: June 13, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 7857 (1989), issued in response to a petition filed by Gary L. Violet (petitioner), proposing the substitution of FM Channel 256C1 for Channel 256C2 at El Dorado, Kansas. Petitioner also requested modification of his construction permit (BMPH-881104IE) for Station KBUZ(FM) to specify operation on the higher class channel.[1] Petitioner filed supporting comments in which he reaffirmed his interest in the channel. No other comments were received.

2. We believe the public interest would be served by the substitution of Channel 256C1 for Channel 256C2 at El Dorado, Kansas, because this would provide a wider coverage FM service. The substitution can be made in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules at the site specified by petitioner.[2] In addition, we are modifying the petitioner's license for Station KBUZ(FM) to specify operation on Channel 256C1 in accordance with Section 1.420(g) of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 30, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
El Dorado, Kansas	256C1

4. IT IS FURTHER ORDERED, That pursuant to Section 316 of the Communications Act of 1934, as amended, the license of Gary L. Violet for Station KBUZ(FM), El Dorado, Kansas, IS MODIFIED TO SPECIFY operation on Channel 256C1 in lieu of Channel 256C2, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] A license to cover petitioner's construction permit (BLH-891030KD) was granted on March 20, 1990.

[2] The coordinates for Channel 256C1 are 37-57-00 and 96-59-00. Because the petition for rule making in this proceeding was filed prior to October 2, 1989, the licensee may avail itself of the provisions of Section 73.213(c) of the Commission's Rules. *See* 47 C.F.R. § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-460

In the Matter of

Amendment of Section 73.202(b), RM-6982
Table of Allotments,
FM Broadcast Stations.
(Minneapolis, Kansas)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 31, 1990; Released: June 13, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 7566 (1989), proposing the allotment of FM Channel 224A to Minneapolis, Kansas, as that community's first local broadcast service. The *Notice* was issued in response to a petition filed by Ruby J. Hoeflicker (petitioner). The petitioner filed comments restating her interest in the allotment. No other comments were received.

2. Channel 224A can be allotted to Minneapolis, Kansas, consistent with the minimum distance separation requirements of Section 73.207 of the Commission's Rules.[1]

3. Based on the above information, we believe that the public interest would be served by the allotment of Channel 224A to Minneapolis because this would provide the community with a first local broadcast service.[2] Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 30, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Minneapolis, Kansas	224A

4. The window period for filing applications will open on **July 31, 1990,** and close on **August 30, 1990.**

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The coordinates for Channel 224A are 39-07-30 and 97-42-18.

[2] Because the petition for rule making in this proceeding was filed prior to October 2, 1989, applicants for this new allotment may avail themselves of the provisions of Section 73.213(c) of the Commission's Rules. *See* 47 C.F.R. § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-383

In the Matter of

Amendment of Section 73.202(b), RM-6917
Table of Allotments,
FM Broadcast Stations.
(Cambridge, Minnesota)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 31, 1990; Released: June 13, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 6679 (1989), issued in response to a petition filed by Monday Media, Inc. (petitioner), proposing the substitution of FM Channel 287C3 for Channel 288A at Cambridge, Minnesota. Petitioner also requested modification of its license for Station KXLV, Channel 288A, to specify operation on the new channel. Petitioner filed supporting comments in which it reaffirmed its interest in the channel. No other comments were received.

2. We believe the public interest would be served by the substitution of Channel 287C3 for Channel 288A at Cambridge, Minnesota, since it could provide the community with its first wide coverage FM station. The substitution can be made in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules.[1] Since Cambridge is located within 320 kilometers (200 miles) of the U.S. - Canadian border, concurrence of the Canadian government has been obtained. In addition, we are modifying the petitioner's license for Station KXLV, Cambridge, Minnesota, to specify operation on Channel 287C3 in accordance with Section 1.420(g) of the Commission's Rules.[2]

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 30, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Cambridge, Minnesota	287C3

4. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station KXLV, Cambridge, Minnesota, IS MODIFIED TO SPECIFY operation on Channel 287C3, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. IT IS FURTHER ORDERED, That the Seceretary SHALL SEND a copy of this *Report and Order* by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to Leighton Enterprises, Inc., Radio Station KCLD-FM, P.O. Box 1458, St. Cloud, Minnesota 56302.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The coordinates for Channel 287C3 are 45-26-40 and 93-11-45. We note that this site meets the minimum distance separation requirements to the construction permit (BPH-870227IK) issued to Station KCLD-FM, St. Cloud, Minnesota, at 45-34-03 and 94-30-43. However, the specified site for Channel 287C3 is short-spaced to an application (BMPH-890824IC) by Station KCLD-FM to modify its construction permit at coordinates 45-40-26 and 94-00-38. Since an applied for, but unauthorized, transmitter site generally reflects a preference for a particular location, it is typically not favored over the provision of a new service. *See Andalusia, Alabama*, 49 FR 32201, August 13, 1984, and cases cited therein. *See also Springdale, Arkansas*, 4 FCC Rcd 674, 677 n.14 (1989). Consistent with this policy, Station KCLD-FM will be required to amend its application to specify a nonconflicting transmitter site. In view of our determination, we will direct the Secretary of the Commission to serve the licensee of Station KCLD-FM with a copy of this *Report* and Order.

[2] Because this allotment is made as a result of a petition for rule making filed prior to October 2, 1989, the licensee may avail itself of the provisions of Section 73.213(c) of the Commission's Rules. *See* 47 C.F.R. § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-377

In the Matter of

Amendment of Section 73.202(b), RM-6876
Table of Allotments,
FM Broadcast Stations.
(Waite Park, Minnesota)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 31, 1990; Released: June 13, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 6675 (1989), issued in response to a request filed by Ronald J. Linder (petitioner), permittee for Station KXSS-FM, Channel 279A, Waite Park, Minnesota. Petitioner proposes the substitution of FM Channel 279C3 for Channel 279A at Waite Park, Minnesota, and modification of his construction permit (BPH-880826MI) for Station KXSS-FM to specify operation on the higher class channel. Petitioner filed comments reaffirming his interest in the channel. No other comments were received.

2. We believe the public interest would be served by the substitution of Channel 279C3 for Channel 279A at Waite Park, Minnesota, since it could provide the community with its first wide coverage FM service. The channel can be allotted to Waite Park in compliance with the minimum distance separation requirements of the Commission's Rules at the petitioner's specified site.[1] In addition, we are modifying the petitioner's permit for Station KXSS-FM, Waite Park, Minnesota, to specify operation on Channel 279C3 in accordance with Section 1.420(g) of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 30, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Waite Park, Minnesota	279C3

4. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the construction permit for Station KXSS-FM, Waite Park, Minnesota, IS MODIFIED TO SPECIFY operation on Channel 279C3 in lieu of Channel 279A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 279C3 are 45-28-03 and 94-09-18. Because this allotment is made as a result of a petition for rule making filed prior to October 2, 1989, the permittee may avail itself of the provisions of Section 73.213(c) of the Commission's Rules. *See* 47 C.F.R. § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Classification of Inside Wiring
Services for Accounting Purposes

MEMORANDUM OPINION AND ORDER ON REVIEW

Adopted: May 29, 1990; Released: May 31, 1990

By the Commission:

I. INTRODUCTION

1. In *RAO Letter 14*,[1] the Accounting and Audits Division (the Division) of the Common Carrier Bureau determined that all carriers subject to our joint cost rules should continue to classify their inside wiring services as nonregulated activities for accounting purposes pending Commission action on remand of *NARUC v. FCC*.[2] On October 30, 1989, the People of the State of California and the Public Utilities Commission of the State of California (collectively, California) filed an application for review of that determination. Eight parties commented on California's application, and four parties replied. [3]

2. In its application for review, California contends that *RAO Letter 14* preempts state regulatory authority in violation of Sections 2(b)(1) and 410(c) of the Communications Act of 1934, as amended,[4] the opinion in *NARUC v. FCC*, and the Commission's decisions deregulating inside wiring services.[5] In this *Order*, we determine that *RAO Letter 14* preempts no state authority, and is fully consistent with the Communications Act, *NARUC v. FCC*, and prior Commission decisions.[6] Accordingly, we deny California's application for review.

II. BACKGROUND

A. Prior Commission Actions

3. In the *Joint Cost Order*,[7] the Commission adopted a system of accounting separation designed to ensure that interstate ratepayers do not bear the costs and risks of the telephone companies' nonregulated ventures. This system requires telephone companies to maintain accounting procedures that allocate their costs and revenues between regulated and nonregulated activities. It also requires the companies to include only those costs and revenues that these accounting procedures identify as regulated in the costs and revenues that the jurisdictional separations process divides between interstate and intrastate operations.[8] This system generates data on interstate costs and revenues that we use, in conjunction with our price cap and access charge rules, to assess the reasonableness of interstate rates. The system necessarily generates residual "non-interstate" cost and revenue data that the states may use in their regulation of telephone companies. However, the states are also free "to employ different cost allocation methods . . . in intrastate ratemaking, and to mandate that carriers keep any side records required for the states' regulatory purposes."[9]

4. The linchpin of the above system is Section 32.23(a) of the Commission's Rules,[10] which describes the activities that telephone companies are to classify as nonregulated for federal accounting purposes. This rule specifies that all preemptively deregulated activities must be classified as nonregulated for accounting purposes. At the time of the rule's adoption in the *Joint Cost Order*, the Commission had preemptively deregulated all inside wiring services, subject to one limited exception for pre-1990 maintenance services in the State of New York.[11] The Commission, therefore, anticipated that this provision would require all inside wiring services, other than the excepted maintenance services in New York, to be classified as nonregulated for federal accounting purposes.[12]

5. An additional provision in Section 32.23(a) specifies that activities deregulated at the interstate level, but not preemptively deregulated, are to be classified as regulated for accounting purposes until the Commission orders otherwise. In the *Joint Cost Order*, the Commission determined, in accordance with this provision, that maintenance services in the State of New York, like all other inside wiring services, should be classified as nonregulated for federal accounting purposes.[13] In contrast, billing and collections activities that were deregulated at the interstate level, but not preemptively deregulated, were to be classified as regulated activities for federal accounting purposes.[14]

B. NARUC v. FCC

6. In *NARUC v. FCC*, the United States Court of Appeals for the District of Columbia Circuit reviewed the Commission's orders preempting state regulation of simple inside wiring services. The Court stated that the Commission may preempt such regulation to the extent necessary to keep state regulation from impeding achievement of a valid federal policy, but held that the Commission had not demonstrated that its preemption of inside wiring was so limited. The Court remanded the Commission's orders for further proceedings in which we might examine whether state regulation of inside wiring services would impede achievement of our goals.[15]

C. RAO Letter 14

7. The opinion in *NARUC v. FCC* generated several inquiries whether telephone companies should continue to classify inside wiring services as nonregulated for federal accounting purposes. In *RAO Letter 14*, the Division responded to those inquiries. The Division determined that classifying inside wiring services as regulated could require costly changes in the internal accounting systems and cost allocation manuals carriers maintain to implement the Commission's cost allocation standards. The Division also determined that a regulated classification would subject costs incurred in providing inside wiring services to the jurisdictional separations process and could require changes in interstate revenue requirements. The Division found that these consequences should be avoided during the period that the regulatory status of inside wiring would be under consideration. Accordingly, the Division required all carriers subject to our joint cost rules to retain the nonregulated classification pending Commission action on remand of *NARUC v. FCC*.[16]

III. THE PARTIES' POSITIONS

A. California's Application for Review

8. In its application for review, California requests that we immediately rescind *RAO Letter 14* and subject inside wiring costs to the jurisdictional separations process. California contends that the letter unlawfully excludes inside wiring costs from that process and "thereby oust[s] the states from accounting for, or otherwise setting the rates based on, the intrastate portion of inside wiring services offered by local telephone companies."[17] California claims that this alleged intrusion into intrastate matters is inconsistent with Section 2(b)(1) of the Communications Act and with the Commission's decisions deregulating inside wiring services. California states that those decisions permit it to impute inside wiring costs to the intrastate jurisdiction for intrastate ratemaking purposes and that it will continue to do so pending the recision of *RAO Letter 14*.[18]

9. California argues that Sections 2(b)(1) and 410(c) of the Communications Act mandate that we apply jurisdictional separations procedures to inside wiring costs. California states that those sections apply to identical services and that the decision in *NARUC v. FCC* requires a determination that inside wiring services fall within the scope of Section 410(c). California maintains that no evidence supports the Division's conclusions that a regulated classification could require significant and costly changes in carriers' internal accounting systems and cost manuals, and that those conclusions are, in any event, legally insufficient to support suspension of Section 410(c).

B. Comments on California's Application

10. Of the eight parties filing comments in this proceeding, only one, the DC PSC, supports California's application for review. A second party, Pacific, requests that we confirm that *RAO Letter 14* does not preempt the states from accounting for inside wiring as they see fit. The remaining parties, five local exchange carriers (LECs) and USTA, all oppose California's application.

11. The DC PSC contends that *NARUC v. FCC* set aside the Commission's preemptive action, and that the prior preemption can have no force and effect unless and until the Commission issues another preemption order. The DC PSC argues that *RAO Letter 14* is inconsistent with *NARUC v. FCC* and Section 410(c), because Section 410(c) requires that all proceedings involving the jurisdictional separation of common carrier property be referred to a Joint Board. According to the DC PSC, this requirement will continue to apply to inside wiring as long as some states treat inside wiring as common carrier property and the Commission has not validly preempted such treatment.[19]

12. The DC PSC contends, in addition, that *RAO Letter 14* is inconsistent with the *Joint Cost Order*. The DC PSC states that the Commission determined in that order that it would treat as regulated and subject to jurisdictional separations any activity deregulated only in the interstate jurisdiction. The DC PSC also states that the *Joint Cost Order* specifically ruled that inside wiring would be classified as a nonregulated activity only because it had been preemptively deregulated.[20]

13. The LECs and USTA assert that *RAO Letter 14* does not intrude upon the states' authority regarding intrastate accounting and ratemaking matters and, therefore, that there is no need to revise or rescind the letter. They argue the letter properly attempts to maintain the status quo pending resolution of the preemption issue on remand and that the letter implicitly recognizes that the accounting classification will be revisited if necessary once that issue is resolved.[21] Pacific, in particular, indicates that California presently requires it to assign all nonregulated wiring costs to the intrastate jurisdiction, and that California imputes these costs for intrastate ratemaking purposes. Pacific maintains that *RAO Letter 14* does not preclude continuation of these practices and that the states need not rely on the jurisdictional separations process to determine the nonregulated wiring costs to be assigned to the intrastate jurisdiction.[22]

14. The LECs and USTA also argue that neither *NARUC v. FCC* nor the Communications Act mandates any change in inside wiring accounting practices or requires the application of jurisdictional separation procedures to inside wiring costs and revenues.[23] Centel and USTA contend that *NARUC v. FCC* addresses the preemption issue, not accounting or jurisdictional separations practices, and that we need not revisit those practices prior to resolving the preemption issue on remand.[24] United argues that California is simply wrong in asserting that *RAO Letter 14* is inconsistent with *NARUC v. FCC*.[25] Bell Atlantic maintains that the statutory language refutes California's claim that Sections 2(b)(1) and 410(c) apply to identical services.[26] Southwestern contends that the issue of whether costs associated with activities classified as nonregulated are subject to the jurisdictional separations process is well-settled and should not be revisited at this time.[27]

15. The LECs and USTA generally agree that classifying inside wiring costs as regulated for federal accounting purposes would impose substantial costs on carriers and could affect interstate revenue requirements.[28] United contends that the Division correctly recognized that carriers should not have to incur these costs prior to resolution of the preemption issue.[29] NYNEX suggests that subjecting inside wiring costs to the jurisdictional separations process would require prior changes in our cost allocation and access charge rules to account properly for, and allow recovery of, those costs.[30] USTA states that its members have made clear that changing the accounting treatment accorded inside wiring, even on an interim basis, would necessitate burdensome changes in the internal accounting systems used to implement our cost allocation, jurisdictional separations, and access charge rules. These changes, according to USTA, could require the development of additional studies, reports, forms, and procedures, as well as additional employee training.[31]

C. Reply Comments

16. In its reply, California asserts that under *NARUC v. FCC* the states are free to tariff inside wiring services pending Commission action on remand. California argues that in order for the states to exercise this freedom, the Commission must apply jurisdictional separations procedures to inside wiring costs. Otherwise, California indicates, the states would be unable to tariff inside wiring services on the basis of those inside wiring costs related to the provision of intrastate communication services. In California's view, excluding inside wiring costs from the jurisdictional separations process thus effectively preempts state regulation of inside wiring services in violation of

Sections 2(b)(1) and 410(c). California claims that *RAO Letter 14* consequently alters, rather than maintains, the status quo.[32]

17. California states that it would not object to a procedure under which the states could directly assign all inside wiring costs to the intrastate jurisdiction and set intrastate inside wiring service rates on the basis of those costs. California suggests, however, that such a procedure would be inconsistent with the Commission's historic intention not to subject inside wiring services to regulation and with the Commission's authority to determine separations factors that assign the costs of dual use services to the interstate and intrastate jurisdictions.[33] Nevertheless, California states that, as an alternative to recision of *RAO Letter 14*, it would be satisfied with a clarification that "where the FCC has not specified a basis for separating costs, the FCC will delegate authority to the states to select a basis for jurisdictionally assigning or allocating such costs."[34]

18. California disputes Bell Atlantic's assertion that Sections 2(b)(1) and 410(c) do not apply to identical services. California maintains that the two sections necessarily apply to the same services, since Section 410(c) simply sets forth a process that facilitates the creation of distinct spheres of federal and state regulation. In addition, California maintains that, contrary to the LECs' and USTA's assertions, subjecting inside wiring costs to the jurisdictional separations process would not require amendment of our cost allocation and access charge rules. Finally, California contends that the carriers' claims regarding the costs of reclassification are simply recitations of unsupported conclusions that should be given no weight.[35]

19. In their replies, Bell Atlantic, BellSouth, and USTA argue that neither California nor the DC PSC has shown that *RAO Letter 14* should be rescinded.[36] Bell Atlantic and USTA dispute the DC PSC's assertions that *NARUC v. FCC* set aside the Commission's preemption decisions and that those decisions can have no force and effect pending the resolution of the preemption issue on remand. These parties assert that the Court neither vacated nor reversed the Commission's decisions and that the preemption decision, therefore, remains in effect pending further Commission action.[37] Bell Atlantic also argues that, contrary to the DC PSC's position, the Commission did not rule in the *Joint Cost Order* that it would treat as regulated and subject to jurisdictional separations any activity deregulated only in the interstate jurisdiction. Instead, Bell Atlantic states, that order determined that it would be best to address the accounting treatment to be accorded activities deregulated in the interstate jurisdiction, but not preemptively deregulated, in the context of each particular activity.[38]

IV. DISCUSSION

20. The pleadings and comments in this proceeding raise a number of questions regarding the extent of our statutory authority and the meaning of the D.C. Circuit's opinion in *NARUC v. FCC*. Most of those questions relate primarily to our long-term policies with regard to inside wiring and, we believe, should be resolved only after we have obtained additional public comment. We have requested such comment in a companion order, and parties there have an opportunity to argue what permanent accounting treatment should be accorded inside wiring costs and revenues.[39] We restrict ourselves here to the question of whether the Division properly ordered telephone companies to continue to classify inside wiring as a nonregulated activity pending the resolution of the questions relating to our long-term policies.

21. As an initial matter, we believe there is no dispute between this Commission and California with regard to the goals an interim accounting policy for inside wiring should attempt to achieve. From a federal perspective, the deregulation of inside wiring services has resulted in substantial reductions in interstate revenue requirements that we believe any interim policy must retain. From a state perspective, the interim policy must leave the states free to determine the accounting and ratemaking practices telephone companies follow for intrastate purposes. There is also a common goal, we believe, of having our interim policy make no unnecessary demands on federal, state, and telephone company resources.

22. The LECs and USTA argue that the best means for reconciling these goals is for us to affirm *RAO Letter 14* and thereby require the continuation of nonregulated accounting for inside wiring services on an interim basis. California suggests, however, that we may require nonregulated accounting only if we clarify that "where [we] ha[ve] not specified a basis for separating costs, [we] will delegate authority to the states to select a basis for jurisdictionally assigning or allocating such costs."[40] As we make clear below,[41] the states may use their own exclusively intrastate processes to determine what portion, if any, of a company's inside wiring costs should be considered intrastate for intrastate ratemaking purposes.

23. California's argument that we must require regulated accounting for inside wiring services, if we do not delegate our authority over jurisdictional separations, is based in large part on California's belief that *RAO Letter 14* preempts state regulation of inside wiring services. There is, however, no such preemptive effect. The letter does not limit in any way the states' authority over intrastate accounting and ratemaking matters. Instead, it merely requires the continuation on an interim basis of the "cost allocation, then separations" system established for inside wiring in the *Joint Cost Order*.[42] That system permits the states to employ their own accounting classifications for intrastate ratemaking purposes and to mandate that carriers keep any side records required for those purposes.[43]

24. California also argues that, even if *RAO Letter 14* preempts no state authority, the "cost allocation, then separations" system adversely affects the states' ability to exercise their authority over intrastate accounting and ratemaking matters. We do not see how this might be so. Our system does not keep the states from accounting for inside wiring services as they see fit, or from imputing a company's inside wiring costs and revenues to the intrastate jurisdiction for intrastate ratemaking purposes.[44] Moreover, we note that a "cost allocation, then separations" procedure for certain nonregulated activities is now codified in Section 32.23(c) of our rules.[45]

25. We also reject California's argument that the Communications Act mandates that we apply jurisdictional separations procedures to inside wiring services. The purpose of applying jurisdictional separations procedures to inside wiring services would be to determine the portion of inside wiring costs to be considered interstate for our purposes.[46] We believe that Section 221(c) of the Communications Act[47] confirms that we need not undertake such

a process.[48] That section states that this Commission *"may* classify the property" of any carrier engaged in wire telephone communication and "determine what property of said carrier shall be considered as used in interstate or foreign telephone toll service."[49] In permitting, but not requiring, us to determine what carrier property should be considered as used in interstate or foreign services, Congress made clear that we need not identify the portion of total inside wiring costs that are incurred to provide interstate, rather than intrastate, services. In addition, Section 410(c) applies to "proceeding[s] regarding the jurisdictional separation of common carrier property and expenses between interstate and intrastate operations...."[50] It does not require us to apply jurisdictional separations procedures to services, like inside wiring installation and maintenance, that are not common carrier services.

26. We believe that the Division acted correctly in requiring that all carriers subject to our joint cost rules continue to employ the nonregulated classification on an interim basis. We, of course, would not affirm the Division's requirement if the costs of adhering to the current system on an interim basis were to exceed the benefits. We believe, however, that any benefits to be derived from conversion to a "separations, then cost allocation" system for inside wiring would be minimal, and that such a conversion would impose significant costs on this Commission, on those states that base their intrastate requirements on our current system, and on the industry. We agree with the Division's finding that these costs ought to be avoided during this interim period.[51] While, as California indicates, the record in this proceeding does not establish the full magnitude and detail of these costs, it is clear that they are real. Even a temporary conversion to a "separations, then cost allocation" system for inside wiring would require changes in our cost allocation and access charge rules or policies, in the internal accounting systems carriers use to implement those rules, and in the automated reporting management information system (ARMIS) we use to review carrier data. These changes would unnecessarily complicate the already difficult task of ensuring that interstate telephone rates are just and reasonable.

V. CONCLUSION

27. Classifying inside wiring services as nonregulated activities for federal accounting purposes on an interim basis will further our goal of ensuring that interstate ratepayers do not bear the costs and risks of the telephone companies' nonregulated ventures and will not affect the states' authority over intrastate accounting and ratemaking matters. Accordingly, we conclude that the Division properly exercised its power under Section 0.291 of our rules[52] in requiring telephone companies to employ that classification pending our decision on remand of *NARUC v. FCC*.

VI. ORDERING CLAUSE

28. Accordingly IT IS ORDERED, pursuant to Section 4(i) and 5(c)(4) of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 155(c)(4), that the Application for Review filed by the People of the State of California and the Public Utilities Commission of the State of California IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Responsible Accounting Officers Letter 14, Classification of Inside Wiring Services for Accounting Purposes, 4 FCC Rcd 7110 (Com. Car. Bureau 1989)(*RAO Letter 14*).

[2] National Association of Regulatory Utility Commissioners v. FCC, 880 F.2d 422 (D.C. Cir. 1989)(*NARUC v. FCC*).

[3] The commenters are the Bell Atlantic Telephone Companies (Bell Atlantic), Central Telephone Company (Centel), the Public Service Commission of the District of Columbia (DC PSC), New England Telephone and Telegraph Company and New York Telephone Company (NYNEX), Pacific Bell (Pacific), Southwestern Bell Telephone Company (Southwestern), the United Telephone System Companies (United), and the United States Telephone Association (USTA). Bell Atlantic, BellSouth Corporation (BellSouth), California, and USTA filed replies.

[4] 47 U.S.C. §§151(b)(1), 410(c). Section 2(b)(1) states that "[e]xcept as provided in section 224 and subject to the provisions of section 301 and Title VI, nothing in this [the Communications] Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier . . . ." Section 410(c) provides, in pertinent part, that "[t]he Commission shall refer any proceeding regarding the jurisdictional separation of common carrier property and expenses between interstate and intrastate operations . . . ." to a Federal-State Joint Board."

[5] *Second Report and Order*, Docket No. 79-105, Detariffing the Installation and Maintenance of Inside Wiring, 51 Fed. Reg. 8498 (Mar. 12, 1986)(*Second Report and Order*), *recon.*, 1 FCC Rcd 1190 (1986)(*Inside Wiring Reconsideration Order*), *further recon.* 3 FCC Rcd 1719 (1988)(*Inside Wiring Further Reconsideration Order*), *remanded, NARUC v. FCC, supra.*

[6] A companion order requests comment on whether we should preempt certain forms of state regulation of inside wiring services and on whether we should require telephone companies to classify those services as nonregulated on a permanent basis. *See Second Further Notice of Proposed Rule Making*, Docket No. 79-105, FCC 90-207 (adopted May 29, 1990)(*Second Further Notice*).

[7] Separation of Costs of Regulated Telephone Services from Costs of Nonregulated Activities, *Report and Order*, 2 FCC Rcd 1298, 1308, paras. 77-78 (1987)(*Joint Cost Order*), *recon.*, 2 FCC Rcd 6283 (1987), *further recon.*, 3 FCC Rcd 6701 (1988), *aff'd sub nom.* Southwestern Bell Corp. v. FCC, 896 F.2d 1378 (D.C. Cir. 1990).

[8] *Joint Cost Order*, 2 FCC Rcd at 1310, para. 91.

[9] *Id.*, para. 90.

[10] 47 C.F.R. §32.23(a).

[11] *Inside Wiring Reconsideration Order*, 1 FCC Rcd at 1193-94, paras. 20-21.

[12] *See Joint Cost Order*, 2 FCC Rcd at 1350, n.150.

[13] *Id.*

[14] *Id.* at 1309, paras. 80-81.

[15] *NARUC v. FCC*, 880 F.2d at 430-31.

[16] *RAO Letter 14*, 4 FCC Rcd at 7110.

[17] California Application for Review at 3.

[18] *Id.*

[19] DC PSC Comments at 1-3.

[20] *Id.* at 2-3.

[21] *E.g.*, Bell Atlantic Opposition at 2-3; United Comments at 2; USTA Comments at 6.

[22] Pacific Comments at 2-5. We note that since inside wiring consists of all telephone plant, other than customer premises equipment, that is located on the customer side of the demarcation point, Pacific is incorrect in referring to wiring on the company side of that point as "regulated inside wiring." *Compare Inside Wiring Reconsideration Order*, 1 FCC Rcd at 1197, n.1 *with* Pacific Comments at 3, n.8.

[23] *E.g.*, Bell Atlantic Opposition at 3-6; Centel Comments at 2-3; Southwestern Opposition at 3-4.

[24] Centel Comments at 2-3; USTA Comments at 2-3.

[25] United Comments at 2-3.

[26] Bell Atlantic Opposition at 3-5.

[27] Southwestern Opposition at 7-9.

[28] As USTA notes (USTA Comments at 3), including inside wiring costs in the costs to be separated between jurisdictions would affect interstate revenue requirements (even if the inside wiring costs were ultimately excluded from the costs recovered through interstate tariffs), because interstate regulated costs are derived in part through allocations and assignments made when costs are separated between regulated and nonregulated activities. Thus, if inside wiring costs are treated as regulated for cost allocation purposes, that classification will change those assignments and allocations and thereby change the level of regulated costs to be recovered from interstate ratepayers.

[29] United Comments at 3-4.

[30] NYNEX Comments at 2.

[31] USTA Comments at 4-5.

[32] California Reply at 1-4.

[33] *Id.* at 2-3, *citing* Hawaiian Telephone Co. v. PUC, 827 F.2d 1264 (9th Cir. 1987), *cert. denied*, 403 U.S. 923 (1988).

[34] California Reply at 3.

[35] *Id.* at 5-6.

[36] Bell Atlantic Reply at 1; BellSouth Reply at 1-3; USTA Reply at 2-3.

[37] Bell Atlantic Reply at 1-3; USTA Reply at 2-3.

[38] Bell Atlantic Reply at 3.

[39] *See Second Further Notice*, *supra* note 6.

[40] California Reply at 3; *see* para. 17, *supra*.

[41] *See* paras. 23-24, *infra*.

[42] *See* para. 3, *supra*.

[43] *See Joint Cost Order*, 2 FCC Rcd at 1310, para. 90.

[44] Contrary to California's argument, it is not essential that this Commission perform a "separations study" for inside wiring. A state that wishes to classify inside wiring services as regulated for intrastate accounting and ratemaking purposes could implement that decision, for example, by requiring telephone companies within its jurisdiction to keep intrastate cost allocation manuals that separately identify inside wiring costs (including overheads) and revenues. The state could add all or part of these costs and revenues to other intrastate costs and revenues to determine the companies' intrastate revenue requirements without violating any rule or policy of this Commission.

[45] 47 C.F.R. §32.23(c).

[46] When this Commission undertakes to separate costs, it necessarily also identifies intrastate costs.

[47] 47 U.S.C. §221(c).

[48] Jurisdictional separations were performed pursuant to Section 221(c) prior to the enactment of Section 410(c) in 1971. *See* State Corp. Comm'n of the State of Kansas v. FCC, 787 F.2d 1421, 1425-26 (10th Cir. 1986).

[49] 47 U.S.C. §221(c)(emphasis added).

[50] 47 U.S.C. §410(c).

[51] *See RAO Letter 14*, 4 FCC Rcd at 7110.

[52] 47 C.F.R. §0.291.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-284

In the Matter of

Amendment of Section 73.202(b),	RM-7224
Table of Allotments,	RM-7301
FM Broadcast Stations.	
(New Sharon and Albia, Iowa)	

NOTICE OF PROPOSED RULE MAKING

Adopted: April 30, 1990; **Released: June 7, 1990**

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it two mutually exclusive petitions for rule making. First Christian Reformed Church ("First Christian") requests the allotment of Channel 260C3 to New Sharon, Iowa, as the community's first local FM service. H&H Broadcasting Corporation ("H&H") requests the allotment of Channel 260C3 to Albia, Iowa, as its first local FM service. New Sharon and Albia are located approximately 34 kilometers apart while the Commission's rules stipulate a minimum distance separation of 153 kilometers for co-channel Class C3 allotments. Both First Christian and H&H state their intentions to apply for the channel, if allotted to their respective communities.

2. Channel 260C3 can be allotted to New Sharon in compliance with the Commission's minimum distance separation requirements with a site restriction of 17.4 kilometers (10.8 miles) south to avoid a short-spacing to Stations KFMH, Channel 259C1, Muscatine, Iowa, and KLYF, Channel 262C, Des Moines, Iowa. Channel 260C3 can be allotted to Albia without the imposition of a site restriction.[1]

3. We believe the public interest would be served by seeking further comments on the allotment of Channel 260C3 to either New Sharon or Albia, Iowa, since the allotment could provide either community with a first local FM service. We are providing the proponents with an opportunity to demonstrate why their respective proposals should be preferred. In this regard, parties should be guided by the criteria set forth in *Revision of FM Assignment Policy and Procedures*, 90 FCC 2d 88 (1982). Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

City	Channel No. Present	Proposed
New Sharon, Iowa	--	260C3
	OR	
Albia, Iowa	--	260C3

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **July 30, 1990,** and reply comments on or before **August 14, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Ronald Bogaards, Treasurer
First Christian Reformed Church
Corner Liberty and West Second
Box 44
Pella, Iowa 50219
(Petitioner for New Sharon)

David D. Oxenford, Esq.
Matthew P. Zinn, Esq.
Fisher, Wayland, Cooper & Leader
1255 - 23rd Street, N.W., Suite 800
Washington, D.C. 20037
(Counsel to H&H)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See, Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an

ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for Channel 260C3 at New Sharon are North Latitude 41-18-49 and West Longitude 92-40-20. The coordinates for Channel 260C3 at Albia are North Latitude 41-01-42 and West Longitude 92-48-12.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 85-269

In re Applications of

DOROTHY O. SCHULZE and DEBORAH BRIGHAM, a General Partnership — File No. BPCT-850320KG

BLANCO COMMUNICATIONS LTD. — File No. BPCT-850320LC

For Construction Permit for New Television Station at Blanco, Texas

ORDER

Adopted: May 31, 1990; Released: June 14, 1990

By the Review Board: MARINO (Chairman), BLUMENTHAL, and ESBENSEN.

1. Before the Review Board are "Exceptions" filed by Dorothy O. Schulze and Deborah Brigham (S&B), and Blanco Communications Ltd., on July 3, 1989, and "Reply Exceptions" filed by S&B, on July 17, 1989 to a *Memorandum Opinion and Order*, FCC 89M-1568, released June 2, 1989.

2. By *Memorandum Opinion and Order*, FCC 90-197, released May 24, 1990, the Commission, in considering various petitions for reconsideration filed by the captioned parties, remanded this proceeding to the presiding officer. In so doing, it specifically declared (*Order* at para. 22): "Blanco and Schulze-Brigham have filed pleadings before the Board covering the matters we have resolved here. We will direct the Board to dismiss those other pleadings."

3. ACCORDINGLY, IT IS ORDERED That the documents listed in paragraph 1 above, filed by Dorothy O. Schulze and Deborah Brigham, a General Partnership, and Blanco Communications, Ltd., ARE DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Eric T. Esbensen
Member, Review Board

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: June 4, 1990

PLEADING CYCLE ESTABLISHED FOR COMMENTS ON SWBT'S AMENDMENT TO ITS COMPARABLY EFFICIENT INTERCONNECTION PLAN FOR THE PROVISION OF VOICE MESSAGING SERVICES

On April 17, 1990, Southwestern Bell Telephone Company (SWBT) filed an amendment to its comparably efficient interconnection (CEI) plan for voice messaging services (VMS). According to SWBT, it is contemplating a change in SWBT's involvement with VMS.

The Commission previously approved SWBT's CEI plan for VMS (3 FCC Rcd 6912 (1988)). In its original plan, SWBT did not propose to use a separate affiliate with respect to any VMS offerings. In its amendment, SWBT now states that it may provide and/or market some or all aspects of its VMS offerings through an affiliated company or companies. SWBT states that it plans to continue a level of involvement with its affiliate's VMS offering(s) that requires continued CEI approval. In this regard, SWBT states that it may assist the affiliate(s) in marketing VMS services or furnishing and/or maintaining VMS equipment. SWBT states that it will continue to satisfy the Computer III requirements, and specifically, all of the requirements and conditions of its approved CEI plan for VMS.

Interested parties should file comments on this amendment by **June 14, 1990,** and reply comments by **June 19, 1990,** with the Secretary, FCC, 1919 M Street, N.W., Washington, D.C. 20554. A copy should also be sent to Peggy Reitzel, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and to the Commission's contractor for public service records duplication: International Transcription Services, Inc. (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Copies of SWBT's amendment can be obtained from ITS at (202) 857-3800.

For further information contact Peggy Reitzel, Policy and Program Planning Division of the Common Carrier Bureau, at (202) 632-4047.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 90-132

In the Matter of

Competition in the
Interstate Interexchange Marketplace

ORDER

Adopted: June 4, 1990; Released: June 5, 1990

By the Chief, Common Carrier Bureau:

1. On May 31, 1990, we extended by fifteen days the period for filing comments in response to the Notice of Proposed Rule Making[1] in this proceeding.[2] CompTel now asks that we further extend the deadline for filing comments to July 3, 1990. CompTel states that the existing comment deadline falls during its previously scheduled Summer Business Conference. It states that unless the deadline is further extended, it would have to complete work on its comments prior to the beginning of this conference, which would effectively deny it a full fifteen-day extension. It states that a small further extension would enable it to complete final work on its comments after the conference and would also enable it to incorporate into its comments input received during the conference from its members.

2. Although we have previously held that a fifteen-day extension of time would appropriately balance CompTel's need for additional time with the public interest in avoiding unnecessary delay in the resolution of the important issues raised in this proceeding, we conclude that the new circumstances presented by CompTel warrant a brief further extension of the deadline for filing comments in this proceeding. We therefore extend the comment deadline to July 3, 1990.

3. Accordingly, IT IS ORDERED, pursuant to sections 4(j) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154 (j) and 155 (c), and authority delegated thereunder pursuant to Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91 and 0.291, that the motion of CompTel for further extension of time is GRANTED. The deadline for filing comments is extended to July 3, 1990. Replies must be filed by August 2, 1990.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] *See* Competition in the Interstate Interexchange Marketplace, Notice of Proposed Rule Making, CC Docket No. 90-132, FCC 90-90, released April 13, 1990.

[2] Competition in the Interstate Interexchange Marketplace, CC Docket 90-132, DA 90-779, released May 31, 1990. This order responded to a motion by the Competitive Telecommunications Association (CompTel) seeking a 45-day extension of the comment period.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-304

In the Matter of

Amendment of Section 73.202(b), RM-7295
Table of Allotments,
FM Broadcast Stations.
(Nyssa, Oregon)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 31, 1990; Released: June 14, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it the petition for rule making filed by Robert M. Mason ("petitioner"), requesting the substitution of Channel 254C1 for Channel 254A at Nyssa, Oregon, and the modification of his construction permit (BPH-890324MH) for a new station on Channel 254A to specify the higher powered channel. Petitioner states that he will apply for the channel, if allotted.

2. Channel 254C1 can be allotted to Nyssa in compliance with the Commission's minimum distance separation requirements with a site restriction of 51.6 kilometers (32.1 miles) south to avoid a short-spacing to Stations KKUC(FM), Channel 254C2, La Grande, Oregon, and KWEI-FM, Channel 257A, Weiser, Idaho, and also accommodate petitioner's desired transmitter site.[1] In this connection, we note that, at the rule making stage, a Class C1 allotment is assumed to provide 70 dBu service to the entire community of license where the transmitter is located no more than 50 kilometers from the community's center city coordinates. Recognizing that his proposal specifies a transmitter site further removed from the center of Nyssa, the petitioner has provided a showing demonstrating that the required 70 dBu service can be provided from the transmitter site specified in his petition. In *Woodstock and Broadway, Virginia*, 3 FCC Rcd 6398 (1988), the Commission set forth a limited exception to its allotment policy of predicting city-grade coverage based upon an assumption of uniform terrain rather than an analysis of the terrain characteristics of specific radials. This exception applies only to existing stations where the new allotment will not be opened up for competing applications. We believe that petitioner's request falls within this limited exception and thus warrants further exploration. Therefore, as in *Woodstock and Broadway, Virginia, supra*, petitioner is requested to provide additional information demonstrating that he has taken the affirmative steps of securing assurances from the owner of the proposed site that he will be able to buy or lease the specific location specified in his petition and FAA approval for a tower at the proposed site. Absent such showings, the requested upgrade may not be permitted.

3. As requested, we also propose to modify petitioner's construction permit for a new station on Channel 254A at Nyssa to specify operation on Channel 254C1. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for use of the channel at Nyssa or require the petitioner to demonstrate the availability of an additional equivalent channel for use by such parties.

4. We believe the public interest would be served by proposing the substitution of Channel 254C1 for Channel 254A at at Nyssa, Oregon, since it could provide the community with its first local wide coverage area service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Nyssa, Oregon	254A	254C1

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **August 6, 1990,** and reply comments on or before **August 21, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Aaron P. Shainis, Esq.
Lee J. Peltzman, Esq.
Baraff, Koerner, Olender & Hochberg, P.C.
2033 M Street, N.W., Suite 700
Washington, D.C. 20036
(Counsel to petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See, Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding.

However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 43-25-36 and West Longitude 116-51-14.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 89-624

In the Matter of

Represcribing the
Authorized Rate of Return
for Interstate Services
of Local Exchange Carriers

ORDER

Adopted: June 7, 1990; Released: June 8, 1990

By the Chief, Common Carrier Bureau:

1. This order grants in part and denies in part the Request for Rebuttal Discovery filed in the captioned proceeding on May 1, 1990 by Consumer Coalition.[1]

2. The Consumer Coalition's discovery request directs interrogatories and requests for documents to parts of the rebuttal rate of return submissions filed by each of the Bell Operating Companies (BOCs) and by the United States Telephone Association (USTA).[2] Some of the interrogatories and document requests seek reports or studies that support, concern, or in some cases contradict the parties' positions or their experts' assumptions or conclusions. Other requests seek the raw data and calculations supporting certain tables or exhibits in the presentations made by the parties' experts. Consumer Coalition also seeks the results, if any, of the application of USTA's cluster analysis to electric utilities and to the Regional Holding Companies.

3. Six BOCs oppose one or more aspects of the discovery request: Ameritech Operating Companies (Ameritech); Bell Atlantic telephone companies (Bell Atlantic); BellSouth Corporation and its telephone companies (BellSouth); New England Telephone and Telegraph and New York Telephone Company (NYNEX); Southwestern Bell Telephone Company (Southwestern Bell); and U S West Communications (US West). The Pacific Telesis Group (Pactel) and USTA do not oppose the discovery request.

4. The Consumer Coalition's discovery request consists of 17 numbered interrogatories and 8 numbered document requests. Some of the interrogatories and document requests are directed in common to all of the BOCs and to USTA, while others are addressed to a specified party only. In this order we treat the discovery request as though it were eight separate requests, each directed to a single party. We consider each party's opposition separately, in each instance addressing only those aspects of the request that are disputed by that party.

Pactel

5. Pactel does not oppose the Consumer Coalition's discovery request. We therefore grant the discovery request as to PacTel.

USTA

6. USTA does not oppose the Consumer Coalition's discovery request. We therefore grant the discovery request as to USTA.

Bell Atlantic

7. Bell Atlantic objects to interrogatories (3), (5), (6), (7), (8), (9), (10), and (11)(a), each of which asks Bell Atlantic to identify "all" publications or articles addressing some topic.[3] Bell Atlantic observes that these interrogatories seek any articles or publications that may exist in the financial literature, and are not limited to articles or publications which Bell Atlantic's employees or experts may have authored, relied upon, or even read. Bell Atlantic contends that answering such interrogatories would, therefore, require Bell Atlantic to conduct a survey of the financial literature, and that there is no reason why Consumer Coalition cannot do this research for itself.[4] Bell Atlantic states that under the Federal rules, "[w]here public information is equally available to the parties . . . the party requesting the information must acquire the information itself, and not through interrogatories."[5] Bell Atlantic argues that the Commission should adopt the same rule in this case. Bell Atlantic raises the same objection to document request (1), which asks it to produce all documents identified in response to the above interrogatories.

8. We find that the interrogatories in question are overly broad and unduly burdensome insofar as they ask Bell Atlantic to conduct new research solely for the purpose of responding to discovery. We limit the scope of the interrogatories in question to articles and publications which were used, considered, or relied upon in the preparation of Bell Atlantic's rebuttal submission. Document request (1) is likewise limited.

Ameritech

9. Ameritech objects to interrogatories (3), (7)(a), (7)(b), (8), and (17), arguing that the interrogatories are unduly burdensome in that they ask Ameritech to undertake research for public documents which Consumer Coalition with less burden could do for itself. Ameritech raises the same objection to document request (1).

10. We find that the interrogatories in question are overly broad and unduly burdensome insofar as they ask Ameritech to conduct new research solely for the purpose of responding to discovery. We limit the scope of the interrogatories in question to articles and publications which were used, considered, or relied upon in the preparation of Ameritech's rebuttal submission. Document request (1) is likewise limited.

US West

11. US West objects to interrogatories (3), (7), and (8) on the grounds that the interrogatories are overly broad, burdensome, and will not demonstrably lead to the production of material, relevant, decisionally-significant evidence. US West states that it does not object to identifying reports, articles, and publications which were used in

preparing its rebuttal submission. US West raises the same objection to document request (1). US West states that, if material is subject to copyright protection, it will make such documents available for inspection, but only if any such publications are not readily available in the public domain.

12. We find that interrogatories (3), (7), and (8) are overly broad and unduly burdensome. We limit the scope of the interrogatories in question to articles and publications which were used, considered, or relied upon in the preparation of US West's rebuttal submission. Document request (1) is likewise limited. As limited, we find that the interrogatories and document request in question satisfy the standards for discovery contained in §65.103 of the Rules.

13. US West may make copyrighted materials available for inspection in its Washington, D.C. office, or at some other location equally convenient to the Commission, in lieu of filing copies of such materials. It must, however, make such materials available for inspection regardless of whether it believes that the materials are "readily available in the public domain." We find that this requirement is reasonable under the circumstances of this proceeding, in which procedural time frames are tight[6] and numerous parties, as well as the Commission's staff, may wish to inspect the discovered material.

14. US West also seeks relief from document request (2). Document request (2) seeks production of a document entitled "Historical Record: Stock Prices 1789-Present (Data Bulletin 1975-1)", which was cited in an exhibit attached to US West's rebuttal submission. US West states that it does not have a copy of this document in its possession; that Mr. Laurence B. Siegel, US West's expert, transcribed stock price data from the period 1790-1871 from this document into a computer file in 1982; that Mr. Siegel was able to access a copy of this document at Securities Research Corporation in Boston, Massachusetts; that Mr. Siegel is unaware of whether the publication is still available at Securities Research Corporation or elsewhere; and that a modified version of the data, with an explanation of the modifications, will be provided in response to interrogatory (7). US West notes that the data contained in the document is only collaborative evidence and does not form the basis for the market risk premium used in US West's CAPM cost of capital estimate. US West requests that it not be required to devote the time and expense to locating a copy of the document.

15. We note that, for purposes of the instant discovery request, Consumer Coalition properly defines "document" to include only materials "in the possession, control, or custody of the RHCs or USTA, or in the hands of any experts, agents, or consultants of an RHC or USTA."[7] If US West does not have the document in question, the document need not be produced.

NYNEX

16. NYNEX objects to the following definition of "identify," which appears in the definition section of Consumer Coalition's discovery request:

> "Identify," when used in connection with a document, means to describe each document, setting forth the date, title, author, addressee, all recipients, and a brief description of the substance thereof, with such reasonable particularity as is sufficient for a specific request for production, and its present or last known location or custodian.[8]

17. NYNEX states that, since Consumer Coalition asks in document request (1) for the production of all documents "identified" in response to the interrogatories, the documents themselves will provide the identifying information. NYNEX argues that it should therefore not be required to "perform a document indexing and summarization service" for Consumer Coalition.

18. We agree with NYNEX that a description of a document "sufficient for a specific request for production" should not be required in the case of a document that is actually produced at the same time it is identified. NYNEX must, however, provide the other information included in Consumer Coalition's definition of "identify." Documents do not always bear on their faces sufficient information to identify themselves; provision of a minimal amount of identifying information is necessary to assure that parties and Commission staff know what they are looking at when they examine the documents produced by NYNEX.

19. NYNEX objects to the Consumer Coalition's request that the request for discovery be continuing in nature. NYNEX argues that there should be no continuing duty to update responses because any updated responses will be filed after all scheduled evidentiary submissions have been completed.

20. We find that discovery should not continue beyond the date on which proposed findings of fact are due to be filed. NYNEX's duty to provide responses to the instant discovery request shall, therefore, terminate on July 2, 1990.

21. NYNEX objects to interrogatories (2), (3), (8), (14), and (16), and document request (1), on the grounds that it would be unnecessarily burdensome and inappropriate for NYNEX to be under a duty to produce "all" the documents referenced in the interrogatories. NYNEX states that it does not object to providing the requested documents to the extent relied upon in NYNEX's rebuttal submission, along with a reasonable sample of other such documents, if they exist.

22. We find that interrogatories (2), (3), (8), (14) and (16) are overly broad and unduly burdensome. We limit the scope of the interrogatories in question to articles and publications which were used, considered, or relied upon in the preparation of NYNEX's rebuttal submission. Document request (1) is likewise limited.

23. NYNEX objects to interrogatory (15)(a), which seeks identification of the following information regarding Tables A-G[9] of the Statement of William H. Davidson, attached to NYNEX's rebuttal submission: all questionnaires, company documents, or personal contacts relied on for each data point; all persons who responded to the questionnaires; and the names of all contacts from whom data were obtained. NYNEX states that the source data for Dr. Davidson's tables were obtained from companies and individuals under agreement that their identities would not be disclosed and that the information would be disclosed only in the aggregated form in which it appears in the tables. NYNEX argues that the names of its sources and the filled out questionnaires are not and will not lead to decisionally significant evidence in this proceeding. NYNEX also objects to document requests 8(b)(i)-(iv),

which seek production of the Davidson questionnaires, certain workpapers used in compiling the data obtained through use of the questionnaires, and of an internal Nippon Telephone document that was cited in Table 2 of the Davidson statement.

24. We find that discovery of the information and documents requested in interrogatory 15(a) and document request 8(b)(i)-(iv) will not lead to decisionally significant evidence concerning the cost of capital for interstate access service. We therefore grant NYNEX's opposition to these portions of the discovery request. NYNEX shall instead provide a detailed description of the process by which Tables A-G were prepared, along with copies of the questionnaire forms that were used.[10]

25. NYNEX states that it will not provide copies of any "commercially available" materials in response to document request (1), and that it will not provide a copy of the article requested in document request 8(v) because that article is commercially available. NYNEX contends that its position in this regard is supported by the Bureau's *March 27 Discovery Order*, in which the Bureau denied Consumer Coalition discovery of the Standard & Poor's Compustat data base on the grounds that "it is not the purpose of our discovery rules to provide participants in rate of return proceedings with free copies of commercially-available data."[11]

26. Denying discovery of Compustat did not establish that under no circumstances would the Commission grant discovery of a document merely because it could be purchased somewhere. Compustat is a data base which is made available by Standard & Poor's to each Compustat subscriber subject to conditions, including copyright restrictions, which prohibit that subscriber from copying or otherwise sharing the data base with others. Many other kinds of materials, such as journal articles, which NYNEX might deem "commercially available," can be copied or provided for inspection without violating the legal or commercial interests of third parties. Given the tight procedural time constraints in the instant proceeding and the limitations we have imposed on the scope of Consumer Coalition's discovery request, it is reasonable to require NYNEX to provide copies of or, in the case of copyrighted materials, allow inspection of, discoverable documents which fall in the latter category.

27. NYNEX states that it does not understand document request 8(a) to request machine-readable data in instances in which NYNEX does not already have the data in that form. NYNEX further states that it will provide the requested data in hard copy because the data does not exist in machine readable form.

28. We understand Consumer Coalition to be requesting that any data which is stored in computer memory be provided to it in machine-readable form, regardless of whether a computer diskette would have to be newly created for this purpose. Consumer Coalition cites case law under the Federal Rules of Civil Procedure for the proposition that such production of machine-readable data by a party that already has the data in its possession is standard practice in discovery where alternative replication of the data would be overly burdensome.[12] However, in the cited case, vast quantities of data were involved, the data had already been produced in printout form, and the court had before it specific facts which allowed it to determine the parties' relative positions with respect to the burden of turning the data into machine-readable form.[13] Moreover, the discovering party volunteered to pay all of the costs incurred in transforming the data into machine-readable form.[14] Here, the record does not provide a sufficient basis for us to require NYNEX to create a machine-readable document in response to document request 8(a) if none now exists.

BellSouth

29. BellSouth contends that service of the discovery request was defective and that the discovery request should, therefore, be dismissed. BellSouth avers that Consumer Coalition served the discovery request, not by hand, but by mail and not until May 4, 1990, three days after its filing.[15] BellSouth states that, as a result of Consumer Coalition's failure to comply with Commission rules[16], it was prejudiced in that it had only one business day to prepare its opposition.[17] In the alternative, should the Commission decide not to dismiss the discovery request, BellSouth raises several objections to the breadth and scope of the requested discovery.

30. Section 65.103(d) of the Commission's Rules requires hand service, on the day of filing, of all requests for discovery filed in rate of return proceedings.[18] Compliance with this rule is essential because parties are allowed only 7 calendar days to file oppositions to discovery requests. The sanction proposed by BellSouth, dismissal of the defectively-served pleading, might well be appropriate in an adjudicatory case. However, the instant proceeding is in essence a Rule Making, albeit one that uses procedural devices, such as discovery, which are more commonly used in adjudications. Dismissal of Consumer Coalition's discovery request would not simply punish Consumer Coalition; it would deny to all parties and to the Commission's staff the benefit of BellSouth's responses to discovery. We therefore decline to dismiss the discovery request as to BellSouth.[19]

31. Each of the objections noted in BellSouth's opposition has been raised and briefed by at least one other BOC. We shall allow BellSouth to apply to itself any and all of the rulings we have made in this Order in response to the oppositions filed by Ameritech, US West, NYNEX, and Southwestern Bell.

32. Finally, we remind Consumer Coalition and all other parties to this proceeding that we expect compliance with the rules regarding service of pleadings in this proceeding, and that individuals who sign certificates of service are responsible for assuring that service does indeed take place as certified.

Southwestern Bell

33. Southwestern Bell objects to the following definition of "document," which appears in the Consumer Coalition's discovery request:

> all writings and records of every type, whether in draft or final form, in the possession, control or custody of the RHCs or USTA, or in the hands of any experts, agents or consultants of an RHC or USTA, including but not limited to memoranda, correspondence, reports, studies, contracts, work papers, calendars, minutes, notes, diaries, letters, log sheets, transcripts, microfilm, tapes, inputs, outputs and printouts, mechanical and electrical recordings, telephone and telegraphic communications, speeches, and all other written, electrically, mechanically or otherwise recorded information. "Document"

> shall also mean non-identical copies of documents, copies of documents notwithstanding that the originals thereof are not in the possession, custody or control of an RHC and USTA and every copy of a document which contains handwritten or other notations which otherwise does not duplicate the original or any other copy, and all attachments to any document.[20]

Southwestern Bell objects to this definition as too broad and burdensome. Southwestern Bell states that the definition requires identification and production of documents not relevant to cost of capital issues in this proceeding, as well as requiring duplicate disclosure of the same information.

34. We deny Southwestern Bell's opposition to this definition. The definition appears to be a typical example of the inclusive definitions which are commonly used in discovery practice.[21] A broad definition of the term "document," moreover, does not itself resolve the specific questions that might be raised with respect to whether any particular document sought would satisfy the standards for discovery under §65.103. Furthermore, documents cannot be withheld from discovery on the grounds that they contain information that is also contained in other discoverable documents.[22] We therefore decline to limit or reject Consumer Coalition's definition of the term "document."[23]

35. Southwestern Bell objects to Consumer Coalition's statement, contained in the definition section of its discovery request, that the Regional Bell Holding Companies (RHCs) filed rebuttal rate of return submissions on April 17, 1990. Southwestern Bell states that it was Southwestern Bell Telephone Company, and not its parent company Southwestern Bell Corporation, that filed the rebuttal submission.

36. We note Southwestern Bell's correction to Consumer Coalition's factually-inaccurate attribution of Southwestern Bell's rebuttal submission to Southwestern Bell Corporation. We also note, however, that, under §65.200 of the Commission's Rules, it is the RHCs and not the telephone operating companies that are subject to the mandatory filing requirements contained in the Part 65 rules.[24]

37. Southwestern Bell objects to the following instruction contained in Consumer Coalition's discovery request:

> In answering these interrogatories, furnish all information in the possession of USTA, the RHCs, or any of their employees, experts, agents, representatives, attorneys or any other person or entity acting in USTA's or the RHCs' interest or on the RHCs' or USTA's behalf, and not merely information within the personal knowledge of the person answering these interrogatories.[25]

Southwestern Bell argues that this instruction is overly broad and unduly burdensome in that compliance would require the polling of thousands of employees. Southwestern Bell states the instruction should be limited to those persons who participated in the preparation of the rebuttal submission.

38. We agree that, read literally, Consumer Coalition's instruction would be unduly burdensome if strictly complied with, given that Southwestern Bell must respond to the discovery request within 14 days of the release of this order. We therefore limit the scope of the instruction in the manner proposed by Southwestern Bell.

39. Southwestern Bell objects to the Consumer Coalition's request that discovery be continuing in nature, arguing that the duty to provide discovery should terminate on July 2, 1990, the date on which proposed findings of fact are due.

40. We find that discovery should not continue beyond the date on which proposed findings of fact are filed. Southwestern Bell's duty to provide responses to the instant discovery request shall, therefore, terminate on July 2, 1990.

41. Southwestern Bell objects to interrogatories (3), (7), and (8) "insofar as [they] seek information beyond the scope of discovery as contemplated by Rule 65.103 by requesting information that has not been demonstrated will lead to the production of information that is material, relevant, or decisionally significant in this proceeding as related to Southwestern Bell's cost of capital."[26] Southwestern Bell also argues that these interrogatories are overly broad in that they seek information not relied on by Southwestern Bell in its cost of capital calculations, and that they improperly seek an unlimited list of annotated authorities by requesting "all" materials. Southwestern Bell objects to document request (1) on the same grounds.

42. We find that interrogatories (3), (7), and (8) are overly broad and unduly burdensome. We limit the scope of the interrogatories in question to articles and publications which were used, considered, or relied upon in the preparation of Southwestern Bell's rebuttal submission. Document request (1) is likewise limited. As limited, we find that the interrogatories and document requests in question satisfy the standards for discovery contained in §65.103 of the Rules.

43. Southwestern Bell objects to interrogatory (13) as vague, indefinite, burdensome, and requiring a speculative response. Interrogatory (13) asks Southwestern Bell to identify all documents that were "used, considered, or relied" on by William E. Avera and Bruce H. Fairchild in the preparation of the table on page 5 of their Joint Affidavit, attached to the rebuttal submission of Southwestern Bell.[27] Southwestern Bell argues that it should have to identify only those documents relied on by Drs. Avera and Fairchild.

44. We deny Southwestern Bell's opposition to interrogatory (13). We find that Southwestern Bell should be able to respond, without speculation or undue burden, by consulting with its experts as to what materials they used, what materials they considered (and possibly rejected), and what materials they relied on, in the creation of the testimony in question. We also find that discovery of the basis for the testimony in question could lead to decisionally significant evidence as to the cost of capital for interstate access service.

Number of copies to be filed.

45. Experience has demonstrated that the Commission does not need the 8 copies of each discovery response that are required by §65.103 (c) of the Rules. Therefore, in order to avoid waste of the time, money, and paper required to produce and file unneeded copies, we hereby

waive in part the requirements of §65.103(c). Parties are directed to file an original and 2 copies of their responses with the Commission.

46. Accordingly, IT IS HEREBY ORDERED that, as to Pacific Telesis Group, the Request for Rebuttal Discovery filed in the captioned proceeding on May 1, 1990 by Consumer Coalition IS GRANTED.

47. IT IS FURTHER ORDERED that, as to the United States Telephone Association, the Request for Rebuttal Discovery filed in the captioned proceeding on May 1, 1990 by Consumer Coalition IS GRANTED.

48. IT IS FURTHER ORDERED that, as to the Bell Atlantic telephone companies, the Request for Rebuttal Discovery filed in the captioned proceeding on May 1, 1990 by Consumer Coalition IS DENIED to the extent indicated in ¶ 8, above, and IS GRANTED in all other respects.

49. IT IS FURTHER ORDERED that, as to the Ameritech operating companies the Request for Rebuttal Discovery filed in the captioned proceeding on May 1, 1990 by Consumer Coalition IS DENIED to the extent indicated in ¶ 10, above, and IS GRANTED in all other respects.

50. IT IS FURTHER ORDERED that, as to US West Communications, the Request for Rebuttal Discovery filed in the captioned proceeding on May 1, 1990 by Consumer Coalition IS DENIED to the extent indicated in ¶¶ 12 and 13, above, and IS GRANTED in all other respects.

51. IT IS FURTHER ORDERED that, as to New Telephone Company and New England Telephone and Telegraph Company, the Request for Rebuttal Discovery filed in the captioned proceeding on May 1, 1990 by Consumer Coalition IS DENIED to the extent indicated in ¶¶ 18, 20, 22, 24, 26, and 28, above, and IS GRANTED in all other respects.

52. IT IS FURTHER ORDERED that, as to the BellSouth Corporation and its telephone companies, the Request for Rebuttal Discovery filed in the captioned proceeding on May 1, 1990 by Consumer Coalition IS DENIED to the extent indicated in ¶ 31, above, and IS GRANTED in all other respects.

53. IT IS FURTHER ORDERED that, as to Southwestern Bell Telephone Company, the Request for Rebuttal Discovery filed in the captioned proceeding on May 1, 1990 by Consumer Coalition IS DENIED to the extent indicated in ¶¶ 38, 40, and 42, above, and IS GRANTED in all other respects.

54. IT IS FURTHER ORDERED that the provisions of §65.103(c) of the Commission's Rules, 47 C.F.R. §65.103(c), ARE WAIVED to the extent indicated herein.

FEDERAL COMMUNICATIONS COMMISSION

Richard Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] The Consumer Coalition consists of the Consumer Federation of America, International Communications Association, and MCI Telecommunications Corporation.

[2] Section 65.103(a) of the Commission's Rules states: "Participants may file written interrogatories and requests for documents directed to any rate of return submission. The permissible scope of discovery is that participants may be examined on any matter, not privileged, that will demonstrably lead to the production of material, relevant, decisionally significant evidence. The Chief, Common Carrier Bureau, shall rule upon any such request." 47 C.F.R. §65.103(a).

[3] For example, interrogatory (3) says: "Identify all investment reports, investment advisory articles and other financial publications that address relative total investment risks (including both financial and business risks) of electric utilities on the one hand and RHCs or interstate access on the other." Consumer Coalition Request for Rebuttal Discovery at 6-7.

[4] Bell Atlantic cites *La Chemise Lacoste v. Alligator Co., Inc.*, 60 F.R.D. 164, 171 (D.Del. 1973) for the proposition that "[a] party should not be required to enter upon extensive independent research " in order to respond to interrogatories. Bell Atlantic Partial Opposition to Request for Rebuttal Discovery, filed May 8, 1990, at 2 n.4.

[5] 4 J. Moore, Moore's Federal Practice ¶ 26.59 (2d. ed. 1989).

[6] Proposed findings of fact are due on July 2, 1990; reply findings are due July 16, 1990.

[7] Consumer Coalition Request for Rebuttal Discovery at 2.

[8] *Id.* at 3.

[9] Tables A-E and G contain the data which Davidson uses in his Statement to compare the telephone systems of the United States and several other countries. Table F contains information about France Telecom's investment in the Minitel system.

[10] NYNEX states in its opposition that it is willing to provide this type of substitute response.

[11] Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, 5 FCC Rcd 2091, 2092 (1990) (*March 27 Discovery Order*).

[12] Consumer Coalition cites *National Union Electric Corp. v. Matsushita Electric Industrial Co.*, 494 F. Supp. 1257 (E.D. Pa. 1980)).

[13] *Id.* at 1261-1262.

[14] *Id.* at 1262.

[15] BellSouth Opposition at 1-2. BellSouth attaches to its pleading the affidavit of David G. Richards stating that Mr. Richards, who is BellSouth's designated agent for service of documents in this proceeding, did not receive hand service of Consumer Coalition's discovery request on May 1, 1990.

[16] 47 C.F.R. 65.102(d).

[17] BellSouth's Opposition at 5.

[18] 47 C.F.R. § 65.103(d).

[19] We note that it would have been entirely appropriate for BellSouth to have requested extra time to respond to the discovery request, but that BellSouth chose not to do so.

[20] Consumer Coalition's Request for Rebuttal Discovery at 2-3.

[21] For example, Consumer Coalition's definition of "document" is substantially the same as the definition of that term used by Ameritech in its April 9 Request for Discovery directed toward the responsive rate of return submission of the Consumer Coalition. *See* Represcribing the Authorized Rate of Re-

turn for Interstate Services of Local Exchange Carriers, DA 90-646, 5 FCC Rcd _____ (1990) (granting Ameritech's Request for Discovery on grounds that it was unopposed).

[22] Southwestern Bell need not, however, provide more than one identical copy of any particular document.

[23] We note that Southwestern Bell does not suggest an alternate formulation for this definition. We therefore are unable to determine precisely which aspects of the definition are objectionable to Southwestern Bell.

[24] 47 C.F.R. §§ 65.200, 201.

[25] Consumer Coalition's Request for Rebuttal Discovery at 4.

[26] Southwestern Bell Opposition at 9.

[27] The table on page 5 of the Joint Affidavit shows correlation coefficients between five published risk indicators and constant growth DCF cost of equity estimates calculated for the period 1977-1989.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-300

In re Applications of

Mildred D. Hall (hereafter "Hall") — File No. BPH-881221ME

Helen Maryse Casey (hereafter "Casey") — File No. BPH-881222MB

For Construction Permit
for a New FM Station on
Channel 235A (94.9 MHz)
in Huntsville, Texas

HEARING DESIGNATION ORDER

Adopted: May 15, 1990; Released: June 14, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. On April 27, 1989, the Commission released a *Report and Order* in MM Docket No. 87-209 to amend the FM *Table of Allotments*. This *Report and Order*, which became effective on June 12, 1989, changes the allocation for Huntsville, Texas, from Channel 235A to Channel 259A. Consequently, the applicants in this proceeding are required to amend their proposals to specify the new channel. To date, no such amendment has been received from Hall. Accordingly, Hall will be required to submit a post-designation amendment to specify the new allocation, to the presiding Administrative Law Judge.

3. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and the applicant have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by Hall would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

4. Casey petitioned for leave to amend her application after the last day for filing amendments as of right. The subject amendment was accompanied by the good cause showing required by 47 C.F.R. § 73.3522(a)(2); consequently, the amendment is accepted for filing. However, an applicant may not improve its comparative advantage after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

5. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

6. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by Hall would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

8. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

9. IT IS FURTHER ORDERED, That Hall shall submit an amendment as required by MM Docket No. 87-209, to the presiding Administrative Law Judge within 30 days after this Order is released.

10. IT IS FURTHER ORDERED, That the petition for leave to amend filed by Casey IS GRANTED, and the corresponding amendment IS ACCEPTED to the extent indicated herein.

11. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

12. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

13. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Fleet Call, Inc. File No. LMK-90036

ORDER

Adopted: June 8, 1990; Released: June 8, 1990

By the Deputy Chief, Land Mobile and Microwave Division, Private Radio Bureau:

1. Cellular Telecommunications Industry Association (CTIA) has filed a motion for extension of time in the above captioned matter, asking that we permit an additional 30 days for comment on the Fleet Call proposal.[1] The National Association of Regulatory Utility Commissioners has filed a statement in support of CTIA's request.

2. Our initial Public Notice in this matter, adopted on April 12, 1990, specified deadlines for comments and reply comments of 30 days from the date of notice and 15 days from the last day of the comment period, respectively. On May 10, 1990, we extended the comment period by 30 days and the reply comment period by 15 days. CTIA argues that additional time is needed to review and analyze the complex technical, legal and policy issues raised by the Fleet Call proposal. CTIA maintains as well that the 60 days now provided for comment are insufficient to permit development of its position, coordination with its membership and preparation of comments for submission to the Commission.

3. In extending the comment and reply comment periods, we acknowledged the importance of developing a complete record in this proceeding. We concluded at that time that periods of 60 and 30 days, respectively, would be adequate for this purpose. CTIA's pleading, the high level of interest generated by our initial Public Notice, and Fleet Call's submission of June 7, 1990, refining its technical proposal to reflect concerns expressed to it by various interested parties and noting the availability of technological advances, persuade us that an extension of the comment period is warranted. With this extension, we will authorize a total of 76 days for the filing of comments and 30 days for the filing of reply comments. These periods should be sufficient for all concerned; we do not contemplate extending them further.

4. Accordingly, IT IS ORDERED, pursuant to the authority set forth in Section 0.331 of the Commission's Rules, that all interested parties shall have until **June 29, 1990,** to file comments and until **July 30, 1990,** to file reply comments.

FEDERAL COMMUNICATIONS COMMISSION

Edward R. Jacobs
Deputy Chief, Land Mobile and
Microwave Division
Private Radio Bureau

FOOTNOTE

[1] CTIA's associated motion for waiver or modification of *ex parte* rules will be considered separately.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

American Telephone and Telegraph Company — Transmittal No. 2220

Revisions to Tariff F.C.C. No. 12

ORDER

Adopted: June 7, 1990; Released: June 8, 1990

By the Chief, Common Carrier Bureau:

1. This transmittal offers Virtual Telecommunications Network Service (VTNS) Option 40, by which the American Telephone and Telegraph Company (AT&T) will provide voice and data communications service between stations in the United States, Puerto Rico, the U.S. Virgin Islands, and specific international locations. This Option includes Measured Ports, Rate Options 1 and 2 Measured Remote Ports, Port Access Telephone Numbers, Voice Transmission Capabilities (VTCs), Data Transmission Capabilities (DTCs), and Satellite Transmission Capabilities (STCs). The rates are stabilized throughout a three-year term following substantially complete installation. AT&T Transmittal 2220, at Section 7.42.

2. Transmittal 2220 also adds rates for international STCs, DTCs, and VTCs to the Tariff 12 general regulations, and adds a definition for STC. The rates for these international service elements are the same as filed in Tariff F.C.C. Nos. 7 and 9, and are not separately justified in this filing. Transmittal 2220 Description and Justification at 1.

3. On April 26, 1990, US Sprint Communications Company Limited Partnership (Sprint) filed a petition to reject, or alternatively, to suspend and investigate the instant transmittal. AT&T filed a reply on April 30, 1990.

4. Sprint argues that AT&T has failed to demonstrate that Option 40 is an integrated service package that is "unlike" its other component services. Petition at 1-2. Moreover, Sprint contends, AT&T's proposal of 44 separate VTNS offerings with similar rate structures makes clear that each such offering is designed for one customer. Additionally, Sprint maintains that various specifications in the transmittal also effectively restrict the offering to one customer. Noting that AT&T filed standard rate schedules for the international STCs, DTCs, and VTCs proposed in this option, Sprint contends that the Commission should order AT&T to offer these rates under a generally available tariff, as in the case of the individual case basis (ICB) rates for the LECs' DS3 service. *Id.* at 2-4. Sprint also alleges that AT&T's cost support "is seriously deficient" and incorporates by reference the arguments it raised in its petitions against VTNS Options 17, 18, and 19, found in AT&T Transmittals 1810, 1826, and 1832, respectively. *Id.* at 4.

5. AT&T asserts that the Communications Act prohibits discrimination only between "like" services, and the Commission has held that Tariff 12 integrated service packages are not "like" the component services offered in separate tariffs. Therefore, AT&T maintains, the rates in Option 40 are not unjustly discriminatory. Reply at 3-4. AT&T also states that the Commission has consistently found AT&T's costing systems sufficient to support AT&T's Tariff 12 filings. These methods, contend AT&T, satisfy the requirements of Section 61.38 of the Commission's Rules. *Id.* at 7-9.

6. The Common Carrier Bureau has reviewed AT&T Transmittal No. 2220, Sprint's petition, and related pleadings. We conclude that no compelling argument has been presented that the tariff is patently unlawful so as to warrant rejection, and that an investigation is not warranted at this time. We note, however, that Sections 7.2.26 and 7.2.27, those portions of Transmittal 2220 concerning international DTCs, STCs, and VTCs and the pertinent rate schedules, have been deferred until July 10, 1990, pursuant to Special Permission No. 90-553. Therefore, Transmittal 2220, with the exception of the materials contained in those sections, shall take effect June 10, 1990, as scheduled.

7. Accordingly, IT IS ORDERED that the petition to reject, suspend, or investigate American Telephone and Telegraph Company Tariff F.C.C. No. 12, Transmittal No. 2220, filed by US Sprint Communications Company Limited Partnership, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

GTE Telephone Operating Companies — Transmittal No. 602

Revisions to Tariff F.C.C. No. 1

ORDER

Adopted: June 8, 1990; Released: June 8, 1990

By the Chief, Common Carrier Bureau:

1. On May 18, 1990, GTE Telephone Operating Companies (GTOC) filed Transmittal No. 602, to revise GTOC's general rate structure for DS3 service. GTOC Transmittal No. 602 is unopposed and scheduled to become effective on June 9, 1990.

2. GTOC's current rate structure for averaged DS3 rates, which are currently under investigation in CC Docket 89-305,[1] includes two rate elements. The first rate element, DS3 Special Access Lines (SALs), provides facilities between a customer's designated location and the GTOC serving wire center for that location. GTOC offers two types of SALs: one for interexchange carriers (ICs), which terminate at an IC's point of presence, and end user SALs, which terminate at all other locations.[2] Transmittal 602 would eliminate the "end user" and "IC" SALs, and establish two options for generally applicable SAL rates, which will vary depending on the number of DS3s ordered. Specifically, customers may order either three or twelve capacity DS3 service, or individual DS3s if the customer has existing interface capability or an interface can be made available with no physical change to the existing customer designated location configuration of service.

3. On June 28, 1989, the Common Carrier Bureau released an Order initiating Docket 89-305, an investigation of various GTOC general DS3 offerings. Issues raised in that investigation generally include whether certain DS3 rates and rate structures are unreasonably discriminatory or provide an undue preference in violation of Section 202(a) of the Communications Act, 47 U.S.C. § 202(a). We conclude that GTOC Transmittal 602 should be subject to the outcome of the Docket 89-305 investigation since that transmittal modifies the rate structure for all GTOC DS3 general rates. We also conclude that Transmittal 602 should be subject to an accounting order. For purposes of imposing an accounting order, we are suspending Transmittal 602 for one day.

4. Accordingly, IT IS ORDERED that GTE Operating Companies Tariff F.C.C. No. 1, Transmittal No. 602, IS INCORPORATED into the Commission's on-going investigation in CC Docket No. 89-305.

5. IT IS FURTHER ORDERED that, pursuant to Section 204(a) of the Communications Act, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the subject tariff revisions are suspended for one day.

6. IT IS FURTHER ORDERED that GTE Telephone Operating Companies shall file a supplement reflecting the suspension of their DS3 rates for one day no later than five days from the release date of this Order. For this purpose Special Permission No. 90-543 is assigned.

7. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 204(a) of the Communications Act, 47 U.S.C. §§ 154(i), 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, GTE Telephone Operating Companies shall keep accurate account of all amounts received pursuant to rates which are the subject of the CC Docket No. 89-305 investigation.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] *See* GTE Telephone Operating Companies, Revisions to Tariff F.C.C. No. 1, CC Docket No. 89-305, 4 FCC Rcd 5425 (Com.Car.Bur. 1989) (*GTOC Designation Order*).

[2] The second DS3 rate element is Special Transport, which consists of charges for each termination of a special transport facility and an additional charge based on the airline mileage between terminating locations. In addition, rates for DS3 service vary depending upon whether the customer selects GTOC's one-, three-, five-, or seven-year DS3 service commitment option.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Fleet Call, Inc. File No. LMK-90036

ORDER

Adopted: June 8, 1990; Released: June 15, 1990

By the Chief, Land Mobile and Microwave Division, Private Radio Bureau:

1. Cellular Telecommunications Industry Association (CTIA) has filed a pleading seeking waiver or modification of our *ex parte* rules in the above captioned matter.[1] CTIA requests in this regard that we designate this a "non-restricted proceeding" within the context of the Commission's Rules or, in the alternative, that we permit *ex parte* contacts for a period of 60 days after the comment period.

2. In support of its request, CTIA states that this is an "adjudicative proceeding" under Commission Rules,[2] and it will become a "restricted proceeding," with *ex parte* presentations prohibited, if a formal opposition is filed. [3] CTIA suggests that opposition to the Fleet Call proposal is likely, points out that Commission rules bar in proceedings that are not yet but might become restricted *ex parte* presentations from persons intending to file oppositions,[4] and argues that these provisions could prevent the kind of broad and open communication between the Commission and interested parties that is essential to the resolution of this particular matter.

3. Typically, adjudicatory proceedings address the rights and responsibilities of a small, easily identified, group of parties. Fundamental fairness dictates that all presentations be made with their knowledge. The Fleet Call proposal, in contrast, requests changes in Commission rule provisions that effect Specialized Mobile Radio (SMR) service in the six markets that are involved. This broad scope of coverage, in terms of both relief requested and parties affected, takes the proposal out of the category of typical "adjudication" and places it more appropriately in the categories of "informal rule making" or "inquiry" proceedings. Under our rules, such proceedings are "non-restricted," and are subject to "permit but disclose" requirements.[5] These requirements balance the need for a full and open airing of the issues with the need for fairness to all concerned. They are, we believe, appropriate to this particular proceeding and we adopt them here.

4. Accordingly, IT IS ORDERED, pursuant to authority set forth in Sections 0.331 and 1.1200 of the Commission's Rules, that the above captioned proceeding is designated a "non-restricted" proceeding for purposes of the Commission's rules governing *ex parte* communications.

FEDERAL COMMUNICATIONS COMMISSION

Richard J. Shiben
Chief, Land Mobile and Microwave Division
Private Radio Bureau

FOOTNOTES

[1] CTIA's related request for extension of time was granted in part by Order, DA 90-814, released June 8, 1990.

[2] Section 1.1202(d) of the Commission's Rules, 47 C.F.R. § 1.1202(d).

[3] Section 1.1208(c) of the Commission's Rules, 47 C.F.R. § 1.1208(c).

[4] Section 1.1208(b)(2) of the Commission's Rules, 47 C.F.R. § 1.1208(b)(2).

[5] Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI TELECOMMUNICATIONS CORPORATION — File No. I-T-C-90-076

Application for authority to lease and operate facilities for direct service between the U.S. and Syria.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: June 7, 1990; Released: June 15, 1990

By the Chief, International Facilities Division:

1. The above-captioned application, filed on March 23, 1990 by MCI Telecommunications Corp. (MCI), requests authority pursuant to Section 214 of the Communications Act of 1934, as amended, to lease and operate satellite and connecting facilities for direct service between the U.S. and Syria. The application was placed on public notice on March 28, 1990. No comments were received. Upon consideration of the application, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct service between the U.S. and Syria by MCI.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-90-076 IS GRANTED, and MCI is authorized to:

a. lease from Comsat and operate 18 voice-grade satellite half-circuits between the Etam, West Virginia earth station and an appropriate satellite over the Atlantic Ocean, connecting with similar circuits between the satellite and an earth station in Syria, furnished by MCI's correspondent in Syria;

b. lease from AT&T and operate 18 voice-grade circuits in the Etam, West Virginia earth station;

c. lease and operate connecting facilities between the Etam, West Virginia earth station and MCI's West Orange, New Jersey operating center; and

d. use said facilities to provide MCI's regularly authorized services, including switched voice services, between the U.S. and Syria and beyond.

3. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to ensure nondiscriminatory use of, and equitable access to, the communications satellite system.

4. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of an operating agreement between MCI and its correspondent in Syria, and a copy of the agreement shall be filed with the Commission within 30 days of its execution.

5. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI TELECOMMUNICATIONS CORPORATION — File No. I-T-C-90-090

Application for authority to lease and operate facilities for direct service between the U.S. and Iraq.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: June 7, 1990; Released: June 15, 1990

By the Chief, International Facilities Division:

1. The above-captioned application, filed on April 13, 1990 by MCI Telecommunications Corp. (MCI), requests authority pursuant to Section 214 of the Communications Act of 1934, as amended, to lease and operate satellite and connecting facilities for the provision of direct service between the U.S. and Iraq. The application was placed on public notice on April 18, 1990. No comments were received. Upon consideration of the application, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct service between the U.S. and Iraq by MCI.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-90-090 IS GRANTED, and MCI is authorized to:

a. lease from Comsat and operate 12 voice-grade satellite half-circuits between the Etam, West Virginia earth station and an appropriate satellite over the Atlantic Ocean, connecting with similar circuits between the satellite and an earth station in Iraq, furnished by MCI's correspondent in Iraq;

b. lease from AT&T and operate 12 voice-grade circuits in the Etam, West Virginia earth station;

c. lease and operate 12 voice-grade circuits between the Etam, West Virginia earth station and MCI's West Orange, New Jersey operating center; and

d. use said facilities to provide MCI's regularly authorized services, including switched voice services, between the U.S. and Iraq and beyond.

3. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to ensure nondiscriminatory use of, and equitable access to, the communications satellite system.

4. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of an operating agreement between MCI and its correspondent in Iraq, and a copy of the agreement shall be filed with the Commission within 30 days of its execution.

5. This order is issued under Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: June 4, 1990

FILING WINDOW FOR 900 MHZ GOVERNMENT/ NONGOVERNMENT FIXED SERVICE

General Docket No. 82-243

In the *Memorandum Opinion and Order* in General Docket No. 82-243, released March 15, 1990, the Commission clarified technical and service rules for the Government/Non-Government Fixed Service at 932-935/941-944 MHz and indicated that it would soon entertain applications for the new channels. A list of available channels is attached as Appendix A to this public notice. The public notice summarizes the application filing process for the new service and establishes the initial application filing period. Subject to the requirements set forth below, applications for this service must be filed during the one-week period beginning July 9, 1990, and ending July 13, 1990. Except as indicated below, applications received at the official filing locations listed below before the start of business on July 9 or after the close of business on July 13 will be dismissed as untimely filed.

Government applications will be filed with the National Telecommunications and Information Administration (NTIA). The filing requirements for Non-Government applications will vary depending upon the nature of the facilities requested as described below.

Common carrier applications for the 932-932.5/941-941.5 MHz bands must be filed on FCC Form 401 and must comply with all pertinent standards of Part 22 of the Commission's Rules. Applications requiring a fee must be accompanied by FCC Form 155 and the filing fee of $230 per application (Fee Type Code CMD), and should be submitted to: Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130. Applications not requiring a fee (*See* Section 1.1112 of the Commission's Rules, 47 CFR Section 1.1112) should be submitted to: Federal Communications Commission, Washington, DC 20554.

Common carrier applications for the 932.5-935/941.5-944 MHz bands must be filed on FCC Form 494 and must comply with all pertinent standards of Part 21 of the Commission's Rules. Applications requiring a fee must be accompanied by FCC Form 155 and the filing fee of $155 per application (Fee Type Code CJP), and should be submitted to: Federal Communications Commission, Common Carrier Domestic Radio, P.O. Box 358155, Pittsburgh, PA 15251-5155. Applications not requiring a fee (*See* again Section 1.1112 of the Commission's Rules) should be submitted to: Federal Communications Commission, Washington, DC 20554.

Private radio applications must be filed on FCC Form 402 and must comply with all pertinent standards of Parts 1 and 94 of the Commission's Rules. Applications requiring a fee must be accompanied by FCC Form 155 and the filing fee of $155 per application (Fee Type Code PEO), and should be submitted to: Federal Communications Commission, Microwave Service, P.O. Box 358250, Pittsburgh, PA 15251-5250. Applications not requiring a fee (*See* again Section 1.1112 of the Commission's Rules), should be submitted to: Federal Communications Commission, Gettysburg, PA 17326.

Failure to observe the above filing requirements will result in dismissal of the application(s).

During the initial filing period, applicants for the 932-932.5/941-941.5 MHz bands may specify a channel preference, but the Commission will treat all channels in these bands as fungible and, together with the NTIA, will assign all channels. Applicants for channels in these bands may apply for either a single channel or a paired channel. Requests for a single channel in these bands will be considered to be for a lower power 932 MHz channel whenever all planned remote stations are located within 48 kilometers of the master/control station. A single channel applicant that does not plan to communicate with remotes farther than this distance but that requires a higher power 941 MHz channel must submit a showing with its application to support its request.

Applications for the 932-932.5/941-941.5 MHz bands that are found acceptable for filing will be assigned a number. A random drawing of the assigned numbers will be conducted in order to rank these applications. To the extent that there are channels available, the applications will subsequently be assigned channels in rank order. To the extent possible, each applicant will be assigned its channel preference. When this is not possible, or if no channel preference is listed, the lowest available channel will be assigned. If it is not possible to assign a channel because of prior assignments to higher ranked applicants, then the application will be set aside to be dismissed. This process will continue until all applications have either been assigned a channel or set aside to be dismissed.

Applicants for the 932.5-935/941.5-944 MHz bands *must* specify their intended frequencies of operation. Applications in this band for one-way, single channel use will be considered only if accompanied by a showing that unpaired spectrum is not available in other bands and that single channel use of these bands will not impair spectrum efficiency. Applicants for the 932.5-935/941.5-944 MHz bands who select a channel that may affect grandfathered broadcast auxiliary stations at 942-944 MHz must also submit evidence that frequency coordination has been performed in accordance with Section 21.100(d) of the Commission's Rules with all potentially affected users.

The grandfathered broadcast auxiliary stations may modify their facilities provided that they submit evidence of frequency coordination in accordance with Section 21.100(d) of the Commission's Rules and provided that they do not preclude the use of any authorized or pending point-to-point applications.[1] A list of these broadcast auxiliary stations and their locations is attached as Appendix B to this public notice.

In the 932.5-935/941.5-944 MHz bands, since applicants will be applying for specific channels, applications that have not been dismissed or otherwise found unacceptable will be sorted by channel selection, and applications for

channels that are not mutually exclusive with any other pending application will be processed and assigned the requested channel pair. In the event that two or more applications are found to be mutually exclusive, a public notice will be issued listing the applications and any available channels; applicants will have an opportunity to resolve the mutual exclusivity by amending their applications, despite the closed window for the filing of applications in these bands. These modified applications will be required to contain the requisite engineering analysis with regard to potential interference to previously authorized facilities and pending applications. If mutually exclusive applications remain after this process is concluded, a lottery will be conducted for each channel among all remaining mutually exclusive applicants.

Applications for channels in the 932-935/941-944 MHz bands, including Government applications filed with the NTIA, will be listed on a Commission public notice as soon as feasible after the filing window closes. Petitions to deny filed against any of these applications must be in accordance with either Section 1.962(g), Section 21.30, or Section 22.30 of the Commission's Rules, whichever is applicable.

After this assignment process has concluded, the Commission will issue a list of all applications that have been granted. At that time, we will also establish the date after which new applications can be filed for any remaining channels in the 932-935/941-944 MHz bands.

FOOTNOTE

[1] In accordance with footnote US302 to the Table of Frequency Allocations, broadcast auxiliary station applicants in Puerto Rico may apply for channels in the 942-944 MHz band and broadcast auxiliary station licensees in Puerto Rico may modify existing facilities in the 942-944 MHz band subject to Section 21.100(d) frequency coordination with other applicants for those channels. *See* Section 2.106 of the Commission's Rules. 47 CFR Section 2.106.

Appendix A

12.5 kHz Point-to-Multipoint Channels

Transmit (or Receive) Frequency (MHz)	Receive (or Transmit) Frequency (MHz)
932.00625	941.00625
.01875	.01875
.03125	.03125
.04375	.04375
.05625	.05625
.06875	.06875
.08125	.08125
.09375	.09375
.10625	.10625
.11875	.11875
.13125	.13125
.14375	.14375
.15625	.15625
.16875	.16875
.18125	.18125
.19375	.19375
.20625	.20625
.21875	.21875
.23125	.23125
.24375	.24375
.25625	.25625
.26875	.26875
.28125	.28125
.29375	.29375
.30625	.30625
.31875	.31875
.33125	.33125
.34375	.34375
.35625	.35625
.36875	.36875
.38125	.38125
.39375	.39375
.40625	.40625
.41875	.41875
.43125	.43125
.44375	.44375
.45625	.45625
.46875	.46875
.48125	.48125
.49375	.49375

25 kHz Point-to-Point Channels

Transmit (or Receive)	Receive (or Transmit)
Frequency (MHz)	Frequency (MHz)
932.5125	941.5125
.5375	.5375
.5625	.5625
.5875	.5875
.6125	.6125
.6375	.6375
.6625	.6625
934.8375	943.8375
.8625	.8625
.8875	.8875
.9125	.9125
.9375	.9375
.9625	.9625
.9875	.9875

50 kHz Point-to-Point Channels

Transmit (or Receive)	Receive (or Transmit)
Frequency (MHz)	Frequency (MHz)
932.7000	941.7000
.7500	.7500
934.8000	943.8000

100 kHz Point-to-Point Channels

Transmit (or Receive)	Receive (or Transmit)
Frequency (MHz)	Frequency (MHz)
932.8250	941.8250
.9250	.9250
933.0250	942.0250
934.5250	943.5250
.6250	.6250
.7250	.7250

200 kHz Point-to-Point Channels

Transmit (or Receive)	Receive (or Transmit)
Frequency (MHz)	Frequency (MHz)
933.1750	942.1750
.3750	.3750
.5750	.5750
.7750	.7750
.9750	.9750
934.1750	943.1750
.3750	.3750

Appendix B

Broadcast Auxiliary Service Licensees at 942-944 MHz

Location	Frequency (MHz)	Callsign	Licensee
ALABAMA			
Mobile	944.000	KHH29	Trio Broadcasting Inc.
ALASKA			
North Kenai	944.250	WLO469	Pickle Hill Public B/C Inc.
CALIFORNIA			
Eureka	942.375	KGA29	Merit B/C Corp.
	942.625	KGA29	Merit B/C Corp.
Fresno	943.000	KWU28	East West FM Group Inc.
Hatchet Mt.	942.500	WDD21	Hermiston Broadcasting Co.
Los Angeles	942.875	KNU22	Classic Comm. of LA LTD
	943.125	KNU22	Classic Comm. of LA LTD
	943.375	KVG27	KFI, Inc.
	943.625	KVG27	KFI, Inc.
	943.375	WBS371	KFI, Inc.
	943.625	WBS371	KFI, Inc.
	943.875	WCX527	H & G Comm. of California
	944.125	WCX527	H & G Comm. of California
	943.000	WHY647	Classic Comm. of LA LTD
	942.500	WJG86	Eleven-Fifty Corp.
Modesto	944.000	KUZ53	KOSO INC TR/AS KOSO B/C
Mountain View	942.475	KIP46	Los Altos B/C Inc.
	942.625	KIP46	Los Altos B/C Inc.
Pittsburg	943.500	KMA91	Diamond B/C of Calif., Inc.
Sacramento	944.000	KNL38	Family Stations Inc.
San Diego	943.500	WHB306	Southern Nevada Radio, Inc.
San Francisco	944.125	KR5559	Bonneville Holding Co.
	944.000	WLL777	Pacific FM Inc.
Santa Barbara	943.400	KMS61	Schuele Organization Inc.
	943.650	KMS61	Schuele Organization Inc.
Stockton	943.000	KMQ87	Anchor Media TV Inc.
	942.500	KNH28	Valley Broadcasters Inc.
COLORADO			
Boulder	944.000	WGZ697	Boulder Valley B/C Inc.

CONNECTICUT			
Fairfield	943.500	WAL22	Sacred Heart Univ. Inc.
FLORIDA			
Key West	943.000	KOA34	Family Radio LTD
Miami Beach	944.000	WLD501	Howard B/C Corp.
Panama City	943.000	KNZ61	Communications SVCS B/C Inc.
Punta Gorda	944.000	WLO821	University of South Florida
Tampa	944.000	KIX39	Tampa Television Inc.
GEORGIA			
Atlanta	942.500	KRY36	Great American TV & Radio
Columbus	943.500	KIN24	Columbus Bcstg Co Inc.
Manchester	943.850	KVR58	WFDR Inc.
	944.150	KVR58	WFDR Inc.
IDAHO			
Teakean Butte	943.000	KZV50	4-K Radio Inc.
ILLINOIS			
Chicago	943.500	KSA37	The Moody Bible Inst.
Edwardsville	944.225	WLL450	Horizon B/C Corp.
	944.225	WLL490	Horizon B/C Corp.
Pekin	944.250	WLO530	Central Ill. Radio
INDIANA			
South Bend	943.875	KDI40	WSBT, Inc.
IOWA			
Dubuque	942.375	KVV20	Telegraph-Herald Inc.
	942.625	KVV20	Telegraph-Herald Inc.
Mount Pleasant	944.000	WLL623	KILJ Inc.
Waterloo	943.000	KAO64	KXEL B/C Co. Inc.
KANSAS			
Wichita	942.375	KVW20	Yellow Stone Brick Radio
	942.625	KVW20	Yellow Stone Brick Radio
	943.000	KMV35	Aberdeen Comm. Inc.

KENTUCKY			
Paducah	943.500	KWV68	WDXR, Inc.
LOUISIANA			
Alexandria	944.000	KTB93	Alexandria B/C Co Inc.
Shreveport	942.500	KRU73	Shreveport Great Empire B/C
MAINE			
Portland	942.875	KCG45	WHOM Associates
	943.125	KCG45	WHOM Associates
	944.000	KVR53	Guy Gannett B/C Svcs
MARYLAND			
Cumberland	943.875	KUZ51	WTBO-WKGO Corp.
MASSACHUSETTS			
Springfield	944.000	KMV31	New England B/C Corp.
MICHIGAN			
Alpena	943.875	WLF231	WHSB, Inc.
	944.125	WLF231	WHSB, Inc.
MINNESOTA			
Duluth	943.000	KZV51	WDSM/KZIO Inc.
MISSOURI			
Mansfield	944.000	WLO822	Terry L. Claar
NEW MEXICO			
Roswell	942.875	KUX93	King B/C Co.
	943.125	KUX93	King B/C Co.
Tohatchi	943.500	WLD211	Ramah Navajo School Board

NEW YORK			
Albany	943.375	KEH79	WAMC
	943.625	KEH79	WAMC
Buffalo	942.500	KEK67	Western NY Educ. TV Assn
	943.000	KEK64	Western NY Educ. TV Assn
Cornwall	943.000	WBD21	Radio Cornwall
NORTH CAROLINA			
Raleign	944.000	KUY78	Capitol B/C Inc.
Washington	944.000	KGY95	Tar Heel B/C System Corp.
NORTH DAKOTA			
Williston	942.500	KWE37	KGCX, Inc.
	943.000	KWE38	KGCX, Inc.
OKLAHOMA			
Poteau	942.875	WAU24	Indian Nation B/C
	943.125	WAU24	Indian Nation B/C
OREGON			
Ashland	943.000	WDF26	Radio Medford Inc.
Corvallis	943.500	KRZ69	State of Oregon
Portland	943.000	KTZ87	Alexander B/C Co.
PENNSYLVANIA			
Erie	943.000	WAA32	Burbach B/C Co.
Meadville	944.000	WLO824	Great Circle B/C Co.
Milton	942.875	KYX72	WMLP, Inc.
	943.125	KYX72	WMLP, Inc.
Scranton	942.375	KYK73	Scranton Times
	942.625	KYK73	Scranton Times
	942.500	KYX73	Scranton Times
Tyrone	942.375	KGK39	Tyrone B/C Co.
	942.625	KGK39	Tyrone B/C Co.
	942.875	KGK40	Tyrone B/C Co.
	943.125	KGK40	Tyrone B/C Co.
	943.375	KHD20	Tyrone B/C Co.
	943.625	KHD20	Tyrone B/C Co.

SOUTH CAROLINA			
Spartanburg	943.875	KJN80	Spartan Radiocasting Co.
	944.000	KJN80	Spartan Radiocasting Co.
	944.125	KJN80	Spartan Radiocasting Co.
TENNESSEE			
Dyersburg	943.850	KGB95	Dr. Pepper Pepsi-Cola
	944.150	KGB95	Dr. Pepper Pepsi-Cola
Knoxville	942.500	KTY51	Stoner B/C System Inc.
TEXAS			
Dallas	944.125	WHJ38	Bonneville Holding Co.
Houston	943.000	KLV57	Gulf Television Corp.
Texarkana	942.500	KZZ21	KCMC Inc.
Waco	943.500	WAL23	KWTX B/C Co.
UTAH			
Salt Lake City	942.375	KXZ63	KCPX Inc.
	942.625	KXZ63	KCPX Inc.
VIRGINIA			
Bedford	944.000	WLO331	Winfas of Virginia Inc.
Danville	943.500	KEB26	Piedmont B/C Corp.
Salem	942.875	KIK83	Mel Wheeler Inc.
	943.000	KIK83	Mel Wheeler Inc.
	943.125	KIK83	Mel Wheeler Inc.
WASHINGTON			
Pasco	942.500	WGY68	Tri-Cities Comm. Inc.
WISCONSIN			
Eau Claire	942.500	KNN20	Central Communications Inc.
Oshkosh	943.850	KVP22	Kimball B/C Inc.
	944.150	KVP22	Kimball B/C Inc.

PUERTO RICO

Cayey	942.500	WLH369	Arso Radio Corp.
Hato Rey	943.000	WLF599	Catholic Apostolic & Roman
Isabela	943.875	WLF900	Radio Noroeste B/C Inc.
	944.125	WLF900	Radio Noroeste B/C Inc.
Jayuya	943.000	WAX25	Voice of Puerto Rico Inc.
Mayaguez	943.875	WLE823	WAEL Inc.
	944.125	WLE823	WAEL Inc.
Morovis	944.000	WLO450	Wifredo G. Blanco PI
Rincon	942.375	WLF565	Arso Radio Corp.
	942.625	WLF565	Arso Radio Corp.
San Juan	942.500	KCI71	Comm. Counsel Group, Inc.
	944.000	KRU35	Hearst Radio Inc.
	943.000	KUQ50	Radio Americus Corp.
	943.500	WLF715	Ministerio Radial Cristo
Villa Fontan Park	943.875	WLJ532	Aero B/C Corp.
	944.125	WLJ532	Aero B/C Corp.

Before the
FEDERAL COMMUNICATIONS COMMISSION FCC 90-163
Washington, D.C. 20554

In the Matter of	)	
Establishment of a Fee	)	
Collection Program to	)	Gen. Docket 86-285
Implement the Provisions	)	
of the Omnibus Budget	)	
Reconciliation Act of 1989	)	

MEMORANDUM OPINION AND ORDER

Adopted: April 19, 1990; Released: April 20, 1990

By the Commission: Commissioner Marshall concurring and issuing a statement; Commissioner Duggan concurring in the result.

I. INTRODUCTION

1. By this Order, the Commission amends certain of its rules to implement section 3001 of the Omnibus Budget Reconciliation Act of 1989 (hereinafter referred to as the Budget Act), which was signed into law on December 19, 1989. [1] This legislation amends section 8 of the Communications Act of 1934, as amended, by revising the Schedule of Charges (fees) now collected by the Commission.

2. Section 3001 (c) of the Budget Act directs that the amendments to the Schedule of Charges take effect on the date of enactment. The law also provides that the Commission implement the amended Schedule of Charges within 150 days of its enactment. [2]

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1 Public Law No. 101-239, 103 Stat. 2106. See also Conference Report to accompany H.R. 3299, H. R. Rep. No. 386, 101st Cong., 1st Sess. 20-28, 433-435 (1989); reprinted in the Congressional Record of Nov. 21, 1989 at page H9333. See also separate floor statements by Congressman Dingell (page H9610) and Senator Hollings (page S16648) that appear in this edition of the Congressional Record.

2 The Conference Report indicates a congressional intent for the public to continue to pay existing fees until the Commission has revised its rules to incorporate these fees and any other changes into its procedures in order to collect these charges.

Further, with the 1989 amendment to section 8, Congress directed the Commission to avoid a "full-blown" rulemaking prior to implementing the new charges. Conference Report at 433. Consistent with that guidance and our 150-day deadline, we have determined not to conduct a notice and comment rulemaking to implement the new fee schedule. [3]

3. We recognize that a News Release of December 21, 1989 indicated that the public would have the opportunity to comment on any changes resulting from the 1989 Budget Act. [4] See News Release, "President Signs Omnibus Budget Reconciliation Act of 1989 Creating New and Revised FCC Fees," December 21, 1989. That News Release also indicated that the public would be given sufficient advance notice of the implementation date for the new fees and any new fee collection procedures. As the new rules must be implemented by May 21, 1990 (150 days from the enactment, as required by Congress), it does not appear that it will be possible for us to both afford an opportunity for public comment and give the public advance notice of the new rules. In these circumstances, and given Congress' preference that we avoid using rulemaking procedures, we believe that the best resolution is to proceed directly to adoption of new rules. However, any party will have the opportunity to seek reconsideration of any particular procedure adopted herein, and we will carefully review any petitions for reconsideration to

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Conference Report at 433.

3 The new rules adopted herein do not require prior notice and comment under the Administrative Procedure Act. 5 U.S.C. § 553. The rule amendments reflecting the new fee amounts are mandated by Congress in the new Schedule of Charges in section 8. Thus, affording an opportunity for public comment on the new fee amounts would serve no purpose and is unnecessary. 5 U.S.C. § 553(b)(B). Implementation of the new fees will also require some adjustments in the manner in which the Commission collects fee. Those changes, however, involve rules of "agency organization, procedure, or practice," and a notice and comment rulemaking is not required before they are put into effect. 5 U.S.C. § 553(b)(A).

4 The preliminary indication that we would proceed by notice and comment rulemaking was based in large part on the fact that we proceeded in that manner in Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Fee Program), 2 FCC Rcd 947 (1987).

determine if any matters raised by commenters require an adjustment to these new rules.

Background

4. The Commission began collecting fees under the statutory authority conferred by section 8 on April 1, 1987. [5] As of December 1, 1989, the Commission had collected $107.2 million from approximately 941,000 applicants and other filers. These totals include fees associated with initial filings of low power television and rural cellular authorizations. Excluding the nonrecurring filings, the Commission collected $50.9 million in the first 30 months of the program. That is, an average of $20.4 million per year from 259,000 applicants. During this same period, approximately 60 percent of all revenues collected were filed with and processed through Mellon Bank, a Treasury Department lockbox bank in Pittsburgh, Pennsylvania.

5. The 1989 Budget Act increases the dollar amount of all existing fees and creates new fees for other regulatory services or filing requirements. [6] New fees include those for Ship Stations, Aircraft Stations, Specialized Mobile Radio Systems, Private Carrier Licenses, Restricted Radio Telephone Operator Permits, Experimental Radio Services, FM/TV Boosters, International Broadcast Stations, mobile Satellite Earth Stations, Radio Determination Satellite Earth Stations, Recognized Private Operating Status, Accounting and Audits, International Telecommunications Settlements, Radio Operator Examinations and License Renewals and Ship Inspections. New fees

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5 Fee Program, 2 FCC Rcd. 947 (1987), 52 F.R. 5285 (Februrary 20, 1987); Supplemental Order on the Establishment of a Fee Collection Program, 2 FCC Rcd. 1882 (1987), 52 F.R. 10226 (March 31, 1987); reconsideration granted in part, Memorandum Opinion and Order (Fee Reconsideration Order), 3 FCC Rcd. 5987 (1988), 53 F.R. 40884 (October 19, 1988).

6 Originally, the Commission had planned to increase all fees in 1989 by 12.6 percent, based upon the percentage change in the Consumer Price Index for all Urban Consumers (CPI-U). See 47 U.S.C. § 158(b). However, as Congress was considering a completely revised Schedule of Charges, including a 12.6 percent fee increase and many entirely new fees, we decided to forego the scheduled 1989 CPI-based increase. Pursuant to section 8(b), as modified in the 1989 Budget Act, the next periodic CPI-based adjustment in the Schedule of Charges will take place on October 1, 1993.

were also created for Commission actions on requests for Special Temporary Authority, Waivers, Call Sign Changes, and Extensions or Reinstatements of Construction Permits.

6. The amended Schedule of Charges will have a dramatic impact on our collection efforts. We expect additional revenues of approximately $20 million per year-- effectively doubling the current program. The number of applications subject to fees would increase from approximately 268,000 to 749,000 per year-- almost tripling the number of transactions the Commission must process. At the same time, the administrative costs of creating and operating this expanded fee program are not included in the Commission's FY90 budget. [7] Therefore, we must utilize the most cost-efficient method of cash management in collecting fees, in order to minimize adverse effects on other critical Commission responsibilities such as the actual review and processing of applications. In addition, we must be mindful of existing law and Treasury Department regulations that require federal agencies to use prescribed cash management techniques that ensure the rapid deposit of funds. [8]

II. FEE COLLECTION PROCEDURES

7. Section 8(f) of the Communications Act directs the Commission to "prescribe appropriate rules and regulations to carry out the provisions..." related to the collection of fees. Our decisions as to how to collect these fees must be based upon a realistic assessment of the funds, personnel, equipment and time available to establish a workable program that conforms to cash management laws. As the resources available to this and other agencies decrease in real terms, we must ensure that we use all possible methods to limit government expenditures that will otherwise be diverted from other areas. This is particularly true when a program almost doubles in size. The collection procedures adopted herein are, again, designed to accommodate the new fee program in the most efficient and practical manner possible, without the need to divert resources from our other regulatory programs.

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7 Proposed legislation that would permit the Commission to defray some of the substantial new cost burdens placed on us, by retaining a small percentage of fees collected, moreover, has not yet been enacted.

8 See 31 U.S.C. §§ 3302, 3303, and 3720; 31 C.F.R. §206.1 et. seq.

A. Payment/Filing Locations

8. Our current rules require that applications with fees be filed either at the Mellon Bank in Pittsburgh, Pennsylvania or the Commission's headquarters in Washington, D.C. [9] Private Radio applications, including those filed by frequency coordinators, are filed in Pittsburgh, while Mass Media, Common Carrier and equipment authorization services are filed in Washington. However, we previously noted that we would consider changing our filing locations if we experienced problems with cash management in Washington. [10]

9. Recently, fee processing in Washington has resulted in significant delays in forwarding applications to the processing offices and bureaus. For example, as of December 1989 it required approximately 15 workdays from the date of filing to complete processing in the Fee Section. Because of chronic difficulties in filling low paying administrative positions in Washington, D.C., compounded by recent appropriations that have decreased the ability of the Commission to replace lost employees, we see no end in sight to unacceptable delays in our Washington Fee Section. These delays will be magnified if we continue to receive Mass Media, Common Carrier and equipment authorization fees in Washington. [11] An effort to at least stabilize speeds of service with the new fees would require almost a tripling of current staff and space to continue processing fees in Washington. [12] We are unwilling to accept this

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9 Mellon is one of several banks nationwide under a master lockbox contract with the Treasury. It was originally selected by the FCC, in consultation with the Treasury, because of its closeness to Washington and outstanding reputation in the cash management field. The Commission signed a Memorandum of Understanding with the Treasury Department and Mellon Bank to meet its specific needs. The Treasury Department is responsible for all reimbursements to the lockbox banks.

10 Fee Program, 2 FCC Rcd at 981, n.25.

11 The number of mass media, common carrier, and equipment authorization filings subject to a fee will increase from an average of 39,000 per year to almost 80,000 per year. This does not include special "window" filings that could cause this level to be much higher.

12 Approximately 32 workyears are now devoted to fee processing in Washington and Gettysburg. We estimate that an additional 53 workyears would be required to maintain the current, unacceptable

deterioration in the Commission's service to the public. We are also unable to support the level of resources needed to continue processing these applications in Washington, especially when a cost-effective alternative exists. Therefore, we have decided to use the Treasury Department Lockbox collection program for all fees. By using the lockbox, we will be able to provide fee processing in three days.

10. We are amending the filing location rules to take full advantage of the lockbox services provided under the auspices of the Department of the Treasury. Under the new rules, with a very few exceptions discussed below, submissions with fees will be filed only with the lockbox bank in Pittsburgh, Pennsylvania. Submissions with fees that are filed elsewhere will be returned to the sender without further processing. However, filings that do not require fees, including those submitted by applicants that claim a fee exemption under 47 U.S.C. § 158(d)(1), will continue to be filed at the appropriate Commission office.

11. This action is taken in response to the congressional suggestion that we use "the most cost-effective cash management techniques, as jointly determined by the Department of the Treasury and the FCC, to assure that government revenues are maximized and collection costs minimized." Conference Report at 433; see also 31 U.S.C § 3302, 31 C.F.R. §§ 206.2, 206.4, 206.5 (relating to the timing and method of depositing money with the Treasury). In 1987, we consulted with the Treasury in the design of our fee collection procedures. At that time, the relatively small number of filings expected in Washington did not justify use of the lockbox. Now, with the almost twofold increase in expected feeable applications directed to Washington and the estimated threefold increase in staff and space required to meet this workload, our consultations with the staff at the Department of the Treasury indicate that a lockbox would be the only viable collection method that could ensure timely deposits consistent with law.

12. Before arriving at this conclusion, we considered the disruption it would cause to the normal filing habits of Washington-based entities. In this regard, the Federal Communications Bar Association (FCBA) has, through informal contacts, expressed objections to the requirement that applications be filed with the lockbox bank in Pittsburgh. The FCBA is concerned that the filer may lose full control over the application when it is put in the hands of an express carrier or courier for delivery to the bank,

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speed of service.

and, even when the application is sent in sufficient time to normally expect timely delivery, unexpected intervening events may result in its loss or late delivery to the bank.

13. We believe that the FCBA's concerns are valid with respect to all time critical broadcast and common carrier applications that previously have been accepted for filing in Washington. By time critical applications, we refer to those requests for FCC authorizations that must be filed by a specific deadline or be dismissed as untimely. That is, applications filed in response to a "window" or a "cut-off" list established by the Commission. Where such time critical applications were previously filed in Washington, the Pittsburgh filing requirement could impose a hardship. [13] We believe that, with respect to those time critical applications whose location of filing has been shifted from Washington to Pittsburgh, we can alleviate the FCBA's concerns, as well as those of its clients, without imposing unreasonable costs on the Government. [14]

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13 For example, because applications filed in response to FM windows, the nationwide paging window, AM cut-off lists, and TV cut-off lists were filed in Washington, we share the FCBA's concern with the potential disruptions that may result from the requirement that they now be filed in Pittsburgh. On the other hand, other time critical applications like those filed in response to low power television and rural cellular "windows" have been submitted in Pittsburgh, and, as we perceive no problem with continuing that requirement, we do not believe that any special procedures are warranted for such filings.

14 In addition to the date stamp/receipt procedure outlined in paragraph 14, we have also considered other alternatives, including: transporting Washington receipts to Pittsburgh for fee processing; and permitting split filings with the fees going to Pittsburgh while the application is filed in Washington. However, the former alternative would impose substantial costs on the Government, including the cost of shipping the materials to Pittsburgh, salaries and space for the required staff in Washington, and the maintenance of records on the materials accepted here and shipped to Pittsburgh. Similarly, the latter alternative would require the matching of fee receipts against application receipts, thereby delaying the processing of applications. A detailed analysis of the costs associated with these options, as well as the date stamp/receipt procedure being adopted herein, is set forth in Appendix C. In our judgment, the costs of either the shipping or matching alternatives outweigh their benefits, but it appears that the date stamp/receipt alternative can alleviate the FCBA's concerns without similar high

14. Accordingly, we are implementing a procedure under which an unofficial copy of such applications, together with evidence of timely shipment to Pittsburgh, may be submitted to the Commission in Washington to be date stamped and retained by the Secretary's office. If submitted, that copy may be used as evidence of timely submission should the official copy be lost or delayed. To establish timely filing, the application must have been submitted to the Secretary's office by close of business on the established deadline date, and it must have been submitted with a copy of a receipt from an express carrier or commercial courier service offering delivery of packages to Pittsburgh. The receipt must indicate that the package was put in the hands of the express carrier or commercial courier in a manner and in sufficient time to normally expect delivery to the lockbox bank before midnight on the next business day of the Commission. [15] The delivery of the application to the lockbox bank on the next business day after the deadline date shall constitute a timely filing of the application in accordance with the deadline established by the Commission. [16] In any case in which the application transmitted to Pittsburgh is lost or delayed, and the filer has availed itself of the date stamp/receipt option, the Secretary's date stamped copy will provide evidence that the filing was made or was made in a timely fashion. [17]

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costs or long delays.

15 In submitting the application and receipt to the Secretary's office in Washington, the filer will be representing that the receipt is for a package containing the original and file copies of the same application, and that package is being shipped to the lockbox bank.

16 The filing procedure being implemented herein for a limited class of mass media and common carrier time critical applications is similar to a "mail box" filing rule that has been used by some courts. In the future, we will consider the extension of this procedure to other time critical application filings.

17 The applications will be maintained in a chronological file so that the staff or any interested parties can confirm that a particular application was, or was not, submitted in this manner, if the need to do so should arise.

15. Although we realize that some inconvenience may still result from our determination to require all fees to be filed with the lockbox, we also believe that cash management requirements cannot be met in any continuation of our current procedures. The Congress has recognized, as have thousands of private companies with large numbers of receivables, that lockbox banks are invaluable tools in speeding the availability of funds and reducing collection costs. [18] Where, as here, the full utilization of lockbox services will permit the Commission to devote more of its scarce staff resources to substantive processing and eliminate the unacceptable delays, we believe that any inconvenience caused thereby is insignificant when balanced against the advantages.

16. The following description is provided for those filers that may be unfamiliar with lockbox services. A lockbox bank serves as the filing and processing agent for a corporation or government entity. Instead of delivering payments to the entity, accounts receivable and identifying information are sent directly to the lockbox. The bank maintains several post office boxes that act as a pre-sort for the payments. Mail is picked up at frequent intervals beginning in the evening and continuing throughout the day. Processing continues 24 hours a day, including weekends. Additional staff is brought in during peak periods to avoid delays. The lockbox opens the mail, processes the funds, records remittance data and forwards remaining materials to the client entity, usually within 24 hours of its receipt by the bank. Funds are deposited to the client's account several times per day to permit immediate crediting of revenues. The FCC has used the lockbox services of the Mellon Bank in Pittsburgh.

17. Under the lockbox filing rule adopted herein, the public will mail their applications or other filings subject to a fee to one of several designated post office boxes in Pittsburgh, Pennsylvania. [19] Hand or courier deliveries will also be accepted by the bank 24 hours per day, every day. The bank will date stamp all materials on the date of their receipt. Mail picked up by the

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18 For instance, lockbox services are used by the Securities and Exchange Commission, the Department of Housing and Urban Development, the Internal Revenue Service, the National Oceanic and Atmospheric Administration, the Department of Justice, the Drug Enforcement Administration, United States Attorneys, and the Immigration and Naturalization Service.

19 The particular box number and Zip code for each type of filing is contained in the rules adopted herein.

bank after 5:30 p.m. or on weekends or holidays and hand delivered or couriered materials received after 5:30 p.m. or on weekends or holidays will be stamped with the actual date and time of receipt. As previously noted, materials submitted to the bank before midnight on any Commission business day will be treated as having been filed on that business day. [20] As the bank makes mail pick-ups after 5:30 p.m., this practice will provide some additional time for entities that file by mail as well as those that file by hand. [21] Materials submitted on weekends or holidays will be treated as having been filed on the next business day.

18. The bank will also date stamp and return a courtesy copy of a filing if requested to do so and provided with a copy of the submission for that purpose. Date stamped courtesy copies are also available by mail to applicants who provide an extra copy of the submission together with a stamped, self-addressed envelope. If the lockbox processer has reason to believe that an incorrect fee has been paid, the application will receive a second review by a Commission employee before it is rejected and returned to the filer. Upon completion of fee processing, the lockbox will express mail applications to the Commission's headquarters or designated locations. We expect that a submission will be in the possession of the bureau or office responsible for its processing within three (3) days of its receipt by the lockbox bank.

19. Many submissions contain competitively sensitive information. The lockbox bank understands the importance of and serious consequences that could result from premature public disclosure of information in these submissions. Although we are unaware of any such disclosure with regard to the more than 800,000 FCC applications processed by the lockbox bank to date, we are in the process of strengthening the disclosure prohibition in the

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20 Entities submitting "mass" filings should note that the bank's loading dock will not be available after 5:30 p.m., and any such filings would have to be hand carried to the lockbox office.

21 We realize that this procedure may slightly disadvantage fee exempt applicants like noncommercial educational broadcasters that may file mutually exclusive applications in response to a cut-off date for facilities that are also available to commercial applicants. However, such instances will be rare, and, with a little planning, the fee exempt filers should have no trouble meeting the deadline by 5:30 p.m. in Washington. Materials submitted on weekends or holidays will be treated as having been filed on the next business day.

current Memorandum of Understanding. The new language will be in effect upon the effective date of these rules. In addition, each lockbox employee who comes in contact with an FCC document will be bonded and will sign an individual disclosure prohibition. The bank will not be permitted to discuss even the existence of an application without prior approval of the FCC. [22] The lockbox will not process classified materials. These will be filed in accordance with existing procedures. The lockbox bank will not return applications or filings to the submitter for any reason.

20. There will be a limited number of exceptions to the requirement that the submission and fee be filed at the lockbox bank. The first such exception involves tariffs where timing and other considerations lead us to modify the procedure. We will require that the tariff submissions be split, and only the official transmittal letter or application for special permission be transmitted with the fee payment and the fee form to the lockbox bank. The attachments will be filed at the Commission through the Secretary's Office under a copy of the transmittal letter. We will not accept the fee payment in Washington. A further exception will be made for that class of fees that are not paid with the actual submission to the FCC, but are billed at a later date. See ¶¶ 26-27, infra. Here again, the fee payment, appropriately identified, will be submitted to the lockbox, although the underlying request was received elsewhere in the Commission. The billing statement will identify the appropriate payment location. Notices of appearance accompanied by hearing fees will be filed at our lockbox bank, but parties should also file a copy of the notice of appearance with the presiding judge.

B. Form Requirement

21. The current fee collection program does not require the use of any standardized form in addition to the form or filing format for the authorization requested. However, expeditious handling of the new fee program requires the use of a new Fee Form in addition to the service related form or filing format now submitted. A copy of the new form, FCC Form 155, is attached as Appendix A. As FCC forms are revised in the future, the informational requirements of the Fee Form will be incorporated into

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22 Thus, the bank will not respond to inquiries on the status of applications. Any such requests, even by the filer itself, should be made to the bureau or office responsible for processing the submission.

the revised forms, and a separate Fee Form will no longer be required for filing using the revised application forms.

22. This new procedure is necessary to avoid the extremely difficult and time consuming task of examining the myriad of FCC forms or other filings to determine the correct fee. Some fees are required on a per station or per frequency basis, but the information necessary to calculate the fee is not readily available on the first page of the form. Other submissions do not require an application form, and these must be read to determine what fee is due. With the expected threefold increase in feeable applications, it is necessary for us to streamline the system for processing fees. The FCC Form 155 will accomplish this. Moreover, it will make it easier for the lockbox bank to make the initial determination of whether the correct fee has been paid without reading the underlying materials, and it will permit the bank to keystroke the information from the Fee Form to create a fee data base. Without this standard Fee Form, we could not ensure that the Commission received enough information to permit us to retain a complete record of payments.

23. We recognize that the Fee Form will cause an additional paperwork burden to the public. However, the minimal additional burden on each filer is more than offset by the improvements to the fee collection process that should occur through the use of the form. We have sought and received Office of Management and Budget (OMB) approval of this form to ensure that it is ready for distribution well before the new Schedule of Charges takes effect. We expect to have these forms ready for the public approximately two weeks prior to that date. Filers may submit reproductions of the form.

24. In addition to information identifying the applicant, the form will require the entry of a fee code, a unique identifier for each FCC fee. The fee codes will be listed in the FCC-produced guides to paying fees as well as in the rules specifying the appropriate fees (§§ 1.1102-1.1105), and the applicant will be required to enter the appropriate fee code on the Fee Form. The Fee Form provides space for listing up to five different fee codes. A review of our filing procedures indicates that this is the maximum number of different feeable requests that can be filed on any application form. Multiples of each feeable request can also be noted on the form. A separate Fee Form will be required for each distinct application, but, where a single application can be used to request multiple licenses, stations, or frequencies, a single Fee Form, accompanied by a single payment, will suffice.

25. Because the Fee Form is essential to the efficient processing of fees, the failure to submit the form will result in the dismissal of the underlying application. Similarly, if the fee

associated with the code(s) entered on the form do not match the fee paid, the submission will be dismissed. Generally, one payment instrument should be submitted with each Fee Form, and the amount of that payment must match the total fee as reflected on the form. [23] We will require that the Fee Form be attached firmly to each application or filing. [24] However, for the present, the Fee Form will not be required for filings on FCC Forms 574, 753, 755, 404, and 506. As a condition of OMB's approval of the Fee Form, we agreed to an early revision these applications, and, in cooperation with OMB, we plan on incorporating the Fee Form data elements in the revised application forms.

C. Billing Procedures

26. As noted above, we have made an exception to the rule that fees must accompany the submission to provide for limited instances in which a billing process will be used. The Fee Program generally rejected the notion that fees could be collected efficiently through a billing process. However, the 1989 Budget Act imposes fees on requests for Ship Inspections, the SMRS Waiting List, audits, and International Telecommunications Settlements. In these instances, because of time sensitivity or because the Commission, not the requester, initiates the fee causing action, the general simultaneous filing rule for fee submission is inappropriate. Moreover, although many requests for Special Temporary Authority (STA) can and should be filed in the normal course, through the lockbox bank, there will be instances in which the applicant believes that the STA being requested is of such an urgent or emergency nature that there is not sufficient time to file in with the lockbox bank. In such circumstances, the requests may be filed with the appropriate FCC Bureau or Office as established in the Commission's rules.

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23 But see Fee Reconsideration Order, 3 FCC Rcd at 5991-92 (discussing the limited exception to the "one instrument" rule).

24 Frequency coordinators filing land mobile radio services applications are required to forward applicants' fee payments when the application is filed. At this time, we will not impose any additional duties on frequency coordinators to review the Fee Form. Rather, the primary responsibility for the Fee Form lies with the applicant, and the frequency coordinator need only forward that form, together with the applicant's fee payment and the underlying application, to the appropriate lockbox address.

27. For these situations (Ship Inspections, the SMRS Waiting List, audits, International Telecommunications Settlements, and STAs), we are now adopting a billing process for collection of fees. Bills will be issued to the affected parties reflecting the amount due and the deadline for payment. Bills that are not paid when due will be subject to a 25 percent penalty and all procedures permitted by our Debt Collection rules. [25] We also retain the authority to dismiss an application or filing or rescind a grant where the applicant has not paid a charge and/or penalty in a timely manner. 47 U.S.C. § 158(c)(2).

D. Additional Procedures for Failed Payments

28. Under our current rules, a request dismissed for the failure of the paying bank to honor the payment instrument may be reinstated upon request, "based on a convincing showing, including a statement by the bank, that the failure to honor the check was entirely due to an error on the part of the bank." Fee Reconsideration Order, 3 FCC Rcd at 5992. Our experience under the existing rule indicates that the procedure can be streamlined and delay eliminated if we require the bank's statement to be in the form of an affidavit from an officer of the bank. [26]

29. We are also adopting a new rule permitting the Commission, on its own motion, to require an applicant or group of applicants to make fee payments by cashier's check. This procedure will be useful where, as has happened in the past, certain applicants repeatedly submit payment instruments that failed due to insufficient funds, stop payment orders, or closed accounts. These failed payments impose significant processing costs on the Government, and we can see no reason why the FCC should permit repeated instances of an action that is a violation of most state laws. This rule permits the staff to require a cashier's check for all future submissions from any person that has two or more instances of failed payments. Moreover, the rule could also be invoked where applications are submitted in filing windows. A

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25 47 C.F.R. §1.1901 et seq. The 25 percent penalty provided for in 47 U.S.C. §158(c)(1) will be added to the account of an applicant that qualifies for billing but does not pay in full by the due date of the first notice. The penalty is included in the principal that is then subject to debt collection and statutory interest rates.

26 In lieu of an affidavit, the bank officer may submit an unsworn statement subscribed to as true under penalty of perjury. See 47 C.F.R. § 1.16.

cashier's check would ensure the Commission of final payment before it expends significant resources in processing an application. [27] In either instance, the applicant would receive prior notice from the Commission that a cashier's check is required. [28]

30. The new fees for Special Temporary Authorities (STAs) and other time sensitive requests require adoption of a new procedure to apply in those instances where it is impractical to condition Commission actions upon final payment and timely payment of bills. For example, an STA may expire by its own terms before the Commission learns of a failed payment or a bill becomes due. In such circumstances, where existing procedures are inadequate, our procedure will be to defer processing and/or grant of any other application or request made by a person or company who has failed to make full payment of a fee due until the matter is resolved.

E. Procedures for Fee Waivers and Requests for Reconsideration and Applications for Review of Fee Decisions

31. The Commission considers requests for fee waivers on a case by case basis when such requests are submitted with the application or filing that otherwise requires a fee and when the applicant demonstrates that waiver would be in the public interest. Our current rules do not require payment of the underlying fee with the waiver request, but, if a fee waiver request submitted without the fee is denied, the underlying application will be dismissed. Thus, the staff has encouraged applicants seeking fee waivers to submit a provisional fee with their request.

32. We believe that this process is unnecessarily time consuming and the ability to request a waiver without submitting the fee may, in some cases, encourage the filing of speculative fee waiver requests. Thus, we are amending the rules to require payment of the underlying fee with any fee waiver request. [29] Fee waiver

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27 Recent rural cellular filings resulted in over 2,000 failed payment instruments.

28 Applicants with multiple failed payment instruments will be notified by letter, specifying the reason for the requirement and its duration. Where a cashier's check is required from all applicants responding to a particular filing window, the requirement will be specified in the "Public Notice" of the window.

29 Applicants seeking deferrals will not be required to submit a provisional fee as the very nature of the request is based on an inability to do so. Should a deferral be denied, the application

requests received without the correct fee will be returned without consideration and the underlying filing will be dismissed. If a properly filed waiver request is granted, we will refund the fee to the applicant. If the waiver request is denied, we will retain the fee and continue substantive processing. Requests for fee waivers will be submitted as part of the underlying application, in accordance with the procedures governing the filing of that application. The fee waiver request, the application, and fee will be filed at the lockbox bank in Pittsburgh.

33. Our rules provide that reconsideration or review of fee decisions will only be available where the applicant has made the full and proper payment of the underlying fee. 47 C.F.R. § 1.1116(b). In a situation where a fee payment instrument accompanies a Petition for Reconsideration or Application for Review under that provision, it will be filed with the lockbox bank in Pittsburgh.

F. Fee Exemptions

34. The 1989 Budget Act preserves all existing fee exemptions for noncommercial educational broadcast applicants and governmental entities. However, section 8(d)(1) is amended to include an exemption for "nonprofit entities licensed in the following radio services: Local Government, Police, Fire, Highway Maintenance, Forestry-Conservation, Public Safety, and Special Emergency Radio, ..." 47 U.S.C. § 158(d)(1). [30] We believe Congress intended "nonprofit entities" to mean entities that receive nonprofit, tax exempt status under the Internal Revenue Code. See 26 U.S.C. § 501. An entity can request nonprofit, tax exempt status by filing a Form 1023 with the Internal Revenue Service. If the entity qualifies, the Service will send it a "Determination Letter." We will require a copy of the "Determination Letter" as proof of nonprofit status. Moreover, we interpret the exemption granted in 47 U.S.C. § 158(d)(1) to include exempt applicants requesting authorizations in the Operational Fixed Microwave Services where those

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or filing will be dismissed. If a deferral is granted, the applicant will be billed.

30 The specific radio services listed by section 8(d)(1) fall under the general rubric of either Special Emergency Radio or Public Safety Radio. See 47 C.F.R. §§90.15 and 90.33 for a complete description of these services.

authorizations are to be used in conjunction with a Special Emergency or Public Safety Radio Service.

III. NEW AND INCREASED FEES

35. We are adopting the Schedule of Charges into our rules exactly as approved by Congress and the President. This includes the language that establishes multiples of a fee based upon the number of frequencies, stations, call signs, waivers, etc. that may be requested by an applicant. Any future changes to these fees will be made through the mechanism created by section 8(b) of the Communications Act (the CPI increase or decrease) or future statutory changes by Congress. As necessary, we will propose new charges or revisions to current charges to Congress for their consideration.

36. The Schedule of Charges results from a determination by the Congress that the fees represent a fair approximation as to how the Commission's costs should be distributed. Conference Report at 433. Members of the affected telecommunications industries have had an opportunity to comment upon and suggest changes to the Schedule of Charges through the legislative process. We have worked with Congress to ensure that, to the best extent possible, fees reflect only the direct cost of processing the typical application or filing. We note, however, that Congress did adopt a minimum fee of $35 that may not reflect the actual cost of processing. [31]

37. Those requests for regulatory action or required filings that are not listed in the Schedule of Charges are not subject to a fee. The public should carefully review these fees to acquaint themselves with amounts and multipliers. The fees are described in detail in the Congressional Record for November 21, 1989, H9610-16. For the convenience of the public, the same description, together with rule citations and information on the appropriate filing form is supplied in Appendix B.

IV. EFFECTIVE DATE FOR NEW PROCEDURES AND FEES

38. As previously noted, the revised section 8 directs the Commission to implement the modified Schedule of Charges not later than 150 days after the date of enactment. Thus, the new

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31 Congress indicated that a minimum fee was necessary to ensure that the costs of collecting a fee do not exceed the potential revenues from the fee. Conference Report at 434.

procedures and fees will go into effect on May 21, 1990. On that day and thereafter, submissions must be filed at the appropriate location and the new FCC Form 155 must accompany the filings. We do not expect to permit a "grace period" for improperly filed applications. The public has been on notice since November 1989 that these fees have changed, and we expect to provide our filers with additional notification through a public relations campaign.

39. Generally, applications or other filings that are received prior to May 21, 1990 would be subject to the prior Schedule of Charges and fee collection procedures, and members of the public with pending applications or requests will not be required to submit an additional fee. However, if a pending application is dimissed and refiled on or after May 21, 1990, or a change in status requires the payment of an additional fee on or after May 21, 1990, the new Schedule of Charges will apply. Applicants designated for hearing on or after May 21, 1990, will pay the revised fee ($6,760), but an applicant designated for hearing prior to May 21, 1990 will have the opportunity to pay the old fee ($6,000), provided that payment is made before May 21, 1990.

V. PROCEDURAL MATTERS

40. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. The proposal has been submitted to and approved by the OMB as prescribed by the Act.

41. The procedures being implemented herein are intended to accomplish the efficient receipt of filings and collection of fees consistent with applicable laws and regulations and with the minimum of inconvenience to those that make filings with the Commission. Although we believe that we have succeeded in this respect, we also recognize that experience with these procedures may reveal that certain adjustments are warranted, and, where appropriate, we will make those adjustments in future proceedings.

42. Accordingly, IT IS ORDERED that, pursuant to authority contained in Section 3001 of the Omnibus Budget Reconciliation Act of 1989 (Public Law Number, 101-239), and in Sections 4(i), 4(j), 8(f) and 303(r) of the Communications Act of 1934, as amended, (47 U.S.C. §§154(i), 154(j), 158(f) and 303(r)), EFFECTIVE ON MAY 21, 1990, Parts 0, 1, 5, and 61 of the Commission's rules ARE AMENDED as set forth below.

43. IT IS FURTHER ORDERED that FCC Form 155 (attached hereto as Appendix A) IS ADOPTED, and, with the exception of the

applications listed at paragraph 25, above, said form will be required for all fee submissions tendered on or after May 21, 1990.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

47 C.F.R. Parts 0, 1, 5, and 61 are amended as follows:

1. The authority citation for Part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. § 155, unless otherwise noted.

2. Section 0.401 is amended by revising the introductory paragraph, revising paragraph (b) to read as follows:

§ 0.401 Location of Commission Offices

The Commission maintains several offices and receipt locations. Applications and other filings not submitted in accordance with the addresses or locations set forth below will be returned to the applicant without processing. When an application or other filing does not involve the payment of a fee, the appropriate filing address or location is established elsewhere in the rules for the various types of submissions made to the Commission. The public should identify the correct filing location by reference to these rules. Applications or submissions requiring fees must be submitted in accordance with section 0.401(b) of the rules irrespective of the addresses that may be set out elsewhere in the rules for other submissions.

(a) * * *

(b) Applications or filings requiring the fees set forth at Part 1, Subpart G of the rules must be delivered to the Commission's lockbox bank in Pittsburgh, Pennsylvania with the correct fee and completed Fee Form attached to the application or filing, unless otherwise directed by the Commission. In the case of any conflict between this rule subpart and other rules establishing filing locations for submissions subject to a fee, this subpart shall govern.

Note: Applicants seeking a waiver or deferral of fees must submit their application or filing in accordance with the addresses set forth below. Applicants claiming a statutory exemption from the fees should file their applications in accordance with paragraph (a) above.

(1) Applications and filings submitted by mail shall be adressed to the Mellon Bank in Pittsburgh, Pennsylvannia. The bank maintains separate post office boxes for the receipt of different types of applications. It will also establish special post office boxes to receive responses to special filings such as applications filed in response to "filing windows" established by the Commission. The address for the submission of such filings will be established in the Public Notice announcing the filing dates. In all other cases, applications and filings submitted by mail should be sent to the

addresses listed in the appropriate fee rules: § 1.1102 for Private Radio Services, § 1.1103 for Equipment Approvals, Experimental Radio Applications, Radio Operator Examinations, and Ship Inspections; § 1.1104 for Mass Media Services; and § 1.1105 for Common Carrier Services.

Note: Private radio applications that require frequency coordination must be submitted to the appropriate certified frequency coordinator before filing with the Commission. After coordination, the applications are filed with the Commission as set for herein. (See sections 90.127 and 90.175 of the rules)

(2) Applications and other filings may also be hand carried, in person or by courier, to the Mellon Bank, Three Mellon Bank Center, 525 William Penn Way, 27th Floor, Room 153-2713, Pittsburgh, Pennsylvania. All applications and filings delivered in this manner must be in an envelope clearly marked for the "Federal Communications Commission," addressed to the attention of "Wholesale Lockbox Shift Supervisor," and identified with the appropriate Post Office Box address as set out in the fee schedule (§§ 1.1102 - 1.1105) Applications should be enclosed in a separate envelope for each Post Office Box. Hand-carried or couriered applications and filings may be delivered at any time on any day. Applications or filings received by the bank before midnight on any Commission business day will be treated as having been filed on that day. Materials received by the bank after midnight, Monday through Friday, or on weekends or holidays, will be treated as having been filed on the next Commission business day.

3. Section 0.482 is revised to read as follows:

§ 0.482 Application for waiver of private radio rules.

All requests for waiver of the rules governing the Private Radio Services that require a fee (see § 1.1102) shall be submitted to the Mellon Bank, Pittsburgh, Pennsylvannia at the address set forth in § 1.1102. Waiver requests that do not require a fee shall be addressed to: Federal Communications Commission, Gettysburg, PA 17326. Waiver requests attached to applications must be submitted in accordance with § 0.401(b) of the rules.

4. The authority citation for Part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

5. Section 1.221 is amended by revising paragraphs (f) and (g) and the following Note to read as follows:

§1.221 Notice of hearing; appearances.

* * * * *

(f) A fee must accompany each written appearance filed with the Commission in certain cases designated for hearing. See Subpart G, Part 1 for the amount due. The fee is required for each applicant designated for hearing in the private radio services in a comparative new or modification proceeding; for each applicant designated for hearing in a common carrier service in comparative new, major/minor change or renewal proceeding; or for each applicant designated for hearing in a case involving the comparative review of applicants for a new commercial television, radio, or Direct Broadcasting Satellite construction permit, a major/ minor change construction permit for a previously authorized commercial facility or comparative renewal license proceeding for these facilities. The fee must accompany each written appearance at the time of its filing and must be in conformance with the requirements of Subpart G of the rules.

(g) A written appearance that does not contain the proper fee, or is not accompanied by a deferral request as per §1.1115 of the rules, shall be dismissed and returned to the applicant by the fee processing staff. The presiding judge will be notified of this action and may dismiss the applicant with prejudice for failure to prosecute if the written appearance is not resubmitted with the correct fee within the original 20 day filing period.

Note: If the parties file a settlement agreement prior to filing the Notice of Appearance or simultaneously with it, the hearing fee need not accompany the Notice of Appearance. In filing the Notice of Appearance, the applicant should clearly indicate that a settlement agreement has been filed. (The fact that there are ongoing negotiations that may lead to a settlement does not affect the requirement to pay the fee.) If a settlement agreement is not effectuated, the Presiding Judge will require immediate payment of the fee.

6. Section 1.931 is amended by revising paragraph (a) it to read as follows:

§1.931 Requests for waiver of private radio rules.

(a) All requests for waiver of the rules governing the Private Radio Services that require a fee (see § 1.1102) shall be submitted to the Mellon Bank, Pittsburgh, Pennsylvannia at the address set forth in § 1.1102. Waiver requests that do not require a fee shall be addressed to: Federal Communications Commission, Gettysburg, PA 17326. Waiver requests attached to applications must be submitted in accordance with § 0.401(b) of the rules.

* * * *

7. The authority citation for Part 1, Subpart G is revised to read as follows:

Authority: Sec. 3001(a), Public Law No.101-239, 103 Stat. 2106, 47 U.S.C. §158.

8. Section 1.1101 is revised to read as follows:

§1.1101 Authority

Authority to impose and collect these charges is contained in Title III, section 3001 of the Omnibus Budget Reconciliation Act of 1989 (Public Law No. 101-239), revising 47 U.S.C. §158, which directs the Commission to prescribe charges for certain of the regulatory services it provides to many of the communications entities within its jurisdiction. This law revises section 8 of the Communications Act of 1934, as amended, which contains a Schedule of Charges as well as procedures for modifying and collecting these charges.

9. Section §1.1102 is revised in its entirety to read as follows:

¶1.1102 Schedule of Charges for private radio service

ACTION	FCC FORM NUMBER	FEE AMOUNT	FEE TYPE CODE	ADDRESS
1. Marine Coast Stations				
a. New, Modification and/or Renewal (per station)	FCC 503 FCC 155	$70	PBM	Federal Communications Commission Marine Coast Service P.O. Box 358265 Pittsburgh, PA 15251-5265
b. Assignments (per station)	FCC 503 FCC 155 FCC 1046	$70	PBM	Federal Communications Commission Marine Coast Service P.O. Box 358265 Pittsburgh, PA 15251-5265
c. Renewal of License (per station)	FCC 405A FCC 155	$70	PBM	Federal Communications Commission 405A Station Renewal P.O. Box 358270 Pittsburgh, PA 15251-5270
d. Special Temporary Authority (Initial, Modifications, Extensions)				
Non-emergency	CORRESP. FCC 155	$100	PCM	Federal Communications Commission Feeable Correspondence P.O. Box 358305 Pittsburgh, PA 15251-5305
Emergency NOTE: Do not send a remittance. You will be billed at a later date.	N/A	$100	PCM	Federal Communications Commission STA Request Consumer Assistance Branch Gettysburg, PA 17326

ACTION	FCC FORM NUMBER	FEE AMOUNT	FEE TYPE CODE	ADDRESS
2. Ship Stations				
a. New, Modification and/or Renewal ..... (per application)	FCC 506	$35	PAS	Federal Communications Commission Marine Ship Service P.O. Box 358275 Pittsburgh, PA 15251-5275
b. Renewal of License ..... (per application)	FCC 405B	$35	PAS	Federal Communications Commission 405B Station Renewal P.O. Box 358290 Pittsburgh, PA 15251-5290
3. Operational Fixed Microwave Stations				
a. New, Modification and/or Renewal..... (per station)	FCC 402 FCC 155	$155	PEO	Federal Communications Commission Microwave Service P.O. Box 358250 Pittsburgh, PA 15251-5250
b. Assignments (per station).....	FCC 402 FCC 155 FCC 1046	$155	PEO	Federal Communications Commission Microwave Service P.O. Box 358250 Pittsburgh, PA 15251-5250
c. Renewal of License (per station).....	FCC 402R	$155	PEO	Federal Communications Commission Microwave Service Renewal P.O. Box 358255 Pittsburgh, PA 15251-5255
d. Special Temporary Authority (Initial, Modifications, Extensions)				
Non-emergency.....	CORRESP. FCC 155	$35	PAO	Federal Communications Commission Feesble Correspondence P.O. Box 358305 Pittsburgh, PA 15251-5305
Emergency..... NOTE: Do not send a remittance. You will be billed at a later date.	N/A	$35	PAO	Federal Communications Commission STA Request Consumer Assistance Branch Gettysburg, PA 17326

ACTION	FCC FORM NUMBER	FEE AMOUNT	FEE TYPE CODE	ADDRESS
4. Aeronautical Stations				
a. New, Modification and/or Renewal ..... (per application)	FCC 404	$35	PAS	Federal Communications Commission Aeronautical Service P.O. Box 358270 Pittsburgh, PA 15251-5270
b. Renewal of License ..... (per application)	FCC 404B	$35	PAS	Federal Communications Commission 404B Station Renewal P.O. Box 358290 Pittsburgh, PA 15251-5290
5. Aeronautical Enroute Stations				
a. New, Modification and/or Renewal..... (per station)	FCC 404 FCC 155	$155	PEO	Federal Communications Commission Aeronautical Service P.O. Box 358270 Pittsburgh, PA 15251-5270
b. Assignments (per station).....	FCC 404 FCC 155 FCC 1046	$155	PEO	Federal Communications Commission Aeronautical Service P.O. Box 358270 Pittsburgh, PA 15251-5270
c. Renewal of License (per station).....	FCC 404R	$155	PEO	Federal Communications Commission Aeronautical Service Renewal P.O. Box 358255 Pittsburgh, PA 15251-5255
d. Special Temporary Authority (Initial, Modifications, Extensions)				
Non-emergency.....	CORRESP. FCC 155	$35	PAO	Federal Communications Commission Feesble Correspondence P.O. Box 358305 Pittsburgh, PA 15251-5305
Emergency..... NOTE: Do not send a remittance. You will be billed at a later date.	N/A	$35	PAO	Federal Communications Commission STA Request Consumer Assistance Branch Gettysburg, PA 17326

billed at a later date.

Consumer Assistance Branch
Gettysburg, PA 17326

ACTION	FCC FORM NUMBER	FEE AMOUNT	FEE TYPE CODE	ADDRESS
4. Aviation (Ground Stations)				
a. New, Modification and/or Renewal (per station)	FCC 406 FCC 155	$70	PBV	Federal Communications Commission Aviation Ground Service P.O. Box 358260 Pittsburgh, PA 15251-5260
b. Assignments (per station)	FCC 406 FCC 155 FCC 1046	$70	PBV	Federal Communications Commission Aviation Ground Service P.O. Box 358260 Pittsburgh, PA 15251-5260
c. Renewal of License (per station)	FCC 405A FCC 155	$70	PBV	Federal Communications Commission 405A Station Renewal P.O. Box 358270 Pittsburgh, PA 15251-5270
d. Special Temporary Authority (Initial, Modifications, Extensions) Non-emergency	CORRESP. FCC 155	$100	PCV	Federal Communications Commission Feesble Correspondence P.O. Box 358305 Pittsburgh, PA 15251-5305
Emergency NOTE: Do not send a remittance. You will be billed at a later date.	N/A	$100	PCV	Federal Communications Commission STA Request Consumer Assistance Branch Gettysburg, PA 17326
5. Aircraft Stations				
a. New, Modification and/or Renewal (per application)	FCC 404	$35	PAA	Federal Communications Commission Aviation Aircraft Service P.O. Box 358280 Pittsburgh, PA 15251-5280
b. Renewal of License (per application)	FCC 405B	$35	PAA	Federal Communications Commission 405B Station Renewal P.O. Box 358290 Pittsburgh, PA 15251-5290

ACTION	FCC FORM NUMBER	FEE AMOUNT	FEE TYPE CODE	ADDRESS
6. Land Mobile Radio Stations				
a. New, Reinstatement, Modification and/or Renewal (per call sign)				
(i) Land Transportation.....	FCC 574	$35	PAL	*Federal Communications Commission Land Transportation Services P.O. Box 358215 Pittsburgh, PA 15251-5215
(ii) Business.....	FCC 574	$35	PAL	*Federal Communications Commission Business Radio Service P.O. Box 358220 Pittsburgh, PA 15251-5220
(iii) Other Industrial.....	FCC 574	$35	PAL	*Federal Communications Commission Other Industrial Services P.O. Box 358225 Pittsburgh, PA 15251-5225
(iv) 800 MHz.....	FCC 574	$35	PAL	*Federal Communications Commission 800 Megahertz Services P.O. Box 358235 Pittsburgh, PA 15251-5235
(v) 900 MHz.....	FCC 574	$35	PAL	*Federal Communications Commission 900 Megahertz Services P.O. Box 358240 Pittsburgh, PA 15251-5240
(vi) Public Safety and Special Emergency..... (For-profit only)	FCC 574	$35	PAL	*Federal Communications Commission Public Safety/Spec Emerg Services P.O. Box 358285 Pittsburgh, PA 15251-5285

*For Addresses preceded by an asterisk (*): Applications requiring coordination must first be submitted to the proper Frequency Coordinator, who will subsequently forward them to the FCC address shown. Reinstatements and Renewals DO NOT require coordination.

proper Frequency Coordinator, who will subsequently forward them to the FCC address shown. Reinstatements and Renewals DO NOT require coordination.

ACTION	FCC FORM NUMBER	FEE AMOUNT	FEE TYPE CODE	ADDRESS
b. Assignments (per station)				
(i) Land Transportation.....	FCC 574 FCC 1046	$35	PAL	Federal Communications Commission Land Transportation Services P.O. Box 358215 Pittsburgh, PA 15251-5215
(ii) Business.....	FCC 574 FCC 1046	$35	PAL	Federal Communications Commission Business Radio Service P.O. Box 358220 Pittsburgh, PA 15251-5220
(iii) Other Industrial.....	FCC 574 FCC 1046	$35	PAL	Federal Communications Commission Other Industrial Services P.O. Box 358225 Pittsburgh, PA 15251-5225
(iv) 800 MHz.....	FCC 574 FCC 1046	$35	PAL	Federal Communications Commission 800 Megahertz Services P.O. Box 358235 Pittsburgh, PA 15251-5235
(v) 900 MHz.....	FCC 574 FCC 1046	$35	PAL	Federal Communications Commission 900 Megahertz Services P.O. Box 358240 Pittsburgh, PA 15251-5240
(vi) Public Safety and Special Emergency..... (For-profit only)	FCC 574 FCC 1046	$35	PAL	Federal Communications Commission Public Safety/Spec Emerg Services P.O. Box 358285 Pittsburgh, PA 15251-5285

ACTION	FCC FORM NUMBER	FEE AMOUNT	FEE TYPE CODE	ADDRESS
c. Renewal of License (per call sign).....	FCC 574R	$35	PAL	Federal Communications Commission 574R Land Mobile Renewal P.O. Box 358245 Pittsburgh, PA 15251-5245
	FCC 405A FCC 155	$35	PAL	Federal Communications Commission 405A Station Renewal P.O. Box 358270 Pittsburgh, PA 15251-5270
d. Special Temporary Authority (Initial, Modifications, Extensions) Non-emergency.....	CORRESP. FCC 155	$35	PAL	Federal Communications Commission Feasble Correspondence P.O. Box 358305 Pittsburgh, PA 15251-5305
Emergency.....	N/A	$35	PAL	Federal Communications Commission STA Request Consumer Assistance Branch Gettysburg, PA 17326
NOTE: Do not send a remittance. You will be billed at a later date.				
e. SMR Waiting List (annual per application).....	N/A	$35	PAL	Applicants will be billed for the amount due and should remit to the address shown on the bill.
7. General Mobile Radio Service				
a. New, Modification and/or Renewal..... (per call sign)	FCC 574	$35	PAL	Federal Communications Commission General Mobile Radio Service P.O. Box 358230 Pittsburgh, PA 15251-5230

ACTION	FCC FORM NUMBER	FEE AMOUNT	FEE TYPE CODE	ADDRESS
b. Renewal of License (per call sign).....	FCC 574R	$35	PAL	Federal Communications Commission 574R Land Mobile Renewal P.O. Box 358245 Pittsburgh, PA 15251-5245
	FCC 405A FCC 155	$35	PAL	Federal Communications Commission 405A Station Renewal P.O. Box 358270 Pittsburgh, PA 15251-5270
c. Special Temporary Authority (Initial, Modifications, Extensions)				
Non-emergency.....	CORRESP. FCC 155	$35	PAL	Federal Communications Commission Feesble Correspondence P.O. Box 358305 Pittsburgh, PA 15251-5305
Emergency..... NOTE: Do not send a remittance. You will be billed at a later date.	N/A	$35	PAL	Federal Communications Commission STA Request Consumer Assistance Branch Gettysburg, PA 17326
8. Transfer of Control (all services) (see NOTE below)..... (per call sign)	FCC 703 FCC 155	$35	PAT	Federal Communications Commission Transfer of Control P.O. Box 358310 Pittsburgh, PA 15251-5310
9. Comparative Hearing.....	N/A FCC 155	$6,760	PFH	Federal Communications Commission Feesble Correspondence P.O. Box 358305 Pittsburgh, PA 15251-5305

NOTE: The Fee due for a Transfer of Control application (FCC Form 703) is calculated by multiplying the number of stations (call signs) being transferred by $35. On FCC Form 155 the number of stations being transferred should be entered in Box 8 of Section I, and the total fee due for the entire transfer should be entered in Box C of Section I.

	ACTION	FCC FORM NUMBER	FEE AMOUNT	FEE TYPE CODE	ADDRESS
10.	Restricted Radiotelephone Operator Permit.....	FCC 753	$35	PAR	Federal Communications Commission Restricted Permit P.O. Box 358295 Pittsburgh, PA 15251-5295
11.	Restricted Radiotelephone Operator Permit.(Limited Use)	FCC 755	$35	PAR	Federal Communications Commission Restricted Permit P.O. Box 358295 Pittsburgh, PA 15251-5295
12.	Request for Duplicate Station License (all services)...	CORRESP. FCC 155	$35	PAD	Federal Communications Commission Feesble Correspondence P.O. Box 358305 Pittsburgh, PA 15251-5305
13.	Routine/Non-Routine Rule Waiver ..... (see NOTE below)	CORRESP. FCC 155	$105	PDW	Federal Communications Commission Waiver Requests P.O. Box 358300 Pittsburgh, PA 15251-5300

NOTE: All rule waiver requests, with or without accompanying applications, must be filed at the address shown in (13) above. Waiver requests and the applications to which they relate should not be filed at separate addresses. Each waiver request must be accompanied by an FCC Form 155 and the correct waiver fee. The associated application, if any, must be accompanied by a separate remittance for the fee due for that application form, and, if required, an FCC Form 155.

10. Section 1.1103 is revised in its entirety to read as follows:

¶1.1103 Schedule of Charges for equipment authorization, experimental radio services, international telecommunications settlements, radio operator examinations, and ship inspections.

ACTION	FCC FORM NUMBER	FEE AMOUNT	FEE TYPE CODE	ADDRESS
. Certification				
a. Receivers (except TV and FM receivers)	731/155	$285.00	EEC	Federal Communications Commission
b. All Other Devices	731/155	735.00	EGC	Equipment Approval Services
c. Modifications and Class II Permissive Changes ..	731/155	35.00	EAC	P.O. Box 358315
d. Request for Confidentiality	731/155	105.00	EBC	Pittsburgh, PA 15251-5315
. Type Acceptance				
a. All Devices	731/155	370.00	EFT	Federal Communications Commission
b. Modifications and Class II Permissive Changes ..	731/155	35.00	EAT	Equipment Approval Services
c. Request for Confidentiality	731/155	105.00	EBT	P.O. Box 358315 Pittsburgh, PA 15251-5315
. Type Approval (all devices)				
a. With Testing (including Major Modifications) ...	731/155	1,465.00	EHA	Federal Communications Commission
b. Without Testing (including Minor Modifications)	731/155	170.00	EDA	Equipment Approval Services
c. Request for Confidentiality	731/155	105.00	EBA	P.O. Box 358315 Pittsburgh, PA 15251-5315
. Notifications	731/155	115.00	ECN	Federal Communications Commission Equipment Approval Services P.O. Box 358315 Pittsburgh, PA 15251-5315
. Advance Approval for Subscription TV System	Corresp/ 155	2,255.00	EIS	Federal Communications Commission
a. Request for Confidentiality	Corresp/ 155	105.00	EBS	Equipment Approval Services P.O. Box 358315 Pittsburgh, PA 15251-5315

	FCC FORM NUMBER	FEE AMOUNT	FEE TYPE CODE	ADDRESS
6. Assignment of Grantee Code for Equipment Identification	Corresp/ 155	35.00	EAG	Federal Communications Commission Equipment Approval Services P.O. Box 358315 Pittsburgh, PA 15251-5315
7. Experimental Radio Service				
a. New Construction Permit and Station Authorization (per application)	442/155	35.00	EAE	Federal Communications Commission Experimental Radio Service P.O. Box 358320 Pittsburgh, PA 15251-5320
b. Modification to Existing Construction Permit and Station Authorization (per application)	442/155	35.00	EAE	
c. Renewal of Station Authorization (per application)	405/155	35.00	EAE	
d. Assignment or Transfer of Control (per application)	702/703/155	35.00	EAE	
e. Special Temporary Authority (per application)	Corresp/ 155	35.00	EAE	
f. Additional Charge for Applications Containing Requests to Withhold Information From Public Inspection (per application)	Corresp/ 155	35.00	EAE	

	ACTION	FCC FORM NUMBER	FEE AMOUNT	FEE TYPE CODE	ADDRESS
8.	Restricted Radio Operator Permit				
	a. New, Duplicate or Replacement.....	FCC 753	$ 35.00	PAR	Federal Communications Commission P.O. Box 358295 Pittsburgh, PA 15251-3295
9.	Restricted Radio Operator Permit (Alien)				
	a. New, Duplicate or Replacement.....	FCC 755	$ 35.00	PAR	Federal Communications Commission P.O. Box 358295 Pittsburgh, PA 15251-3295
10.	Marine Radio Operator Permit				
	a. Examination Fee.....	FCC 756 FCC 155	$ 35.00	FAR	Federal Communications Commission P.O. Box 358105 Pittsburgh, PA 15251-5105
	b. Duplicate, Renewal or Replacement.....	FCC 756 FCC 155	$ 35.00	FAR	Federal Communications Commission P.O. Box 358105 Pittsburgh, PA 15251-5105
11.	General Radiotelephone Operator License				
	a. Examination Fee.....	FCC 756 FCC 155	$ 35.00	FAR	Federal Communications Commission P.O. Box 358105 Pittsburgh, PA 15251-5105
	b. Duplicate, Renewal or Replacement.....	FCC 756 FCC 155	$ 35.00	FAR	Federal Communications Commission P.O. Box 358105 Pittsburgh, PA 15251-5105
12.	First, Second or Third Class Radiotelegraph Operator's Certificate				
	a. Examination Fee.....	FCC 756 FCC 155	$ 35.00	FAR	Federal Communications Commission P.O. Box 358105 Pittsburgh, PA 15251-5105
	b. Duplicate, Renewal or Replacement.....	FCC 756 FCC 155	$ 35.00	FAR	Federal Communications Commission P.O. Box 358105 Pittsburgh, PA 15251-5105

	ACTION	FCC FORM NUMBER	FEE AMOUNT	FEE TYPE CODE	ADDRESS
13.	Ship Radar Endorsement a. Examination Fee	FCC 756 FCC 155	$ 35.00	FAR	Federal Communications Commission P.O. Box 358105 Pittsburgh, PA 15251-5105
14.	Passenger Vessel Inspection a. Title III, Part III	FCC 801 FCC 155	$ 320.00	FCS	Federal Communications Commission P.O. Box 358110 Pittsburgh, PA 15251-5110
15.	Oceangoing Vessel Inspection a. Title III, Part II	FCC 801 FCC 155	$ 620.00	FFS	Federal Communications Commission P.O. Box 358110 Pittsburgh, PA 15251-5110
16.	Great Lakes Agreement a. Inspection	FCC 801 FCC 155	$ 360.00	FDS	Federal Communications Commission P.O. Box 358110 Pittsburgh, PA 15251-5110
17.	SOLAS a. Inspection	FCC 801 FCC 155	$ 540.00	FES	Federal Communications Commission P.O. Box 358110 Pittsburgh, PA 15251-5110
18.	Temporary Waiver a. Of Inspection	FCC 155	$ 60.00	FBS	Federal Communications Commission P.O. Box 358110 Pittsburgh, PA 15251-5110
19.	International Telecommunications Settlement	FCC 99	$ 2/line item	IAT	Licensees will be billed

11. Section 1.1104 is revised in its entirety to read as follows:

¶1.1104 Schedule of Charges for mass media services.

¶1.1104 Schedule of Charges for mass media services.

ACTION	FCC FORM NUMBER	FEE AMOUNT	FEE TYPE CODE	ADDRESS
1. Commercial Television Stations				
a. New or Major Change Construction Permit (per application)	FCC 155, 301	$2,535	MVT	Federal Communications Commission Mass Media Services P.O. Box 358165 Pittsburgh, PA 15251-5165
b. Minor Change (per application)	FCC 155, 301	$565	MPT	Federal Communications Commission Mass Media Services P.O. Box 358165 Pittsburgh, PA 15251-5165
c. Hearing (Major/Minor Change, Comparative New, or Comparative Renewal) (per application)	FCC 155, Corres.	$6,760	MWT	Federal Communications Commission Mass Media Services P.O. Box 358170 Pittsburgh, PA 15251-5170
d. License (per application)	FCC 155, 302	$170	MJT	Federal Communications Commission Mass Media Services P.O. Box 358165 Pittsburgh, PA 15251-5165
e. License Assignment or Transfer				
(i) Long Forms (per station license)	FCC 155, ~~314~~/315 314	$565	MPT	Federal Communications Commission Mass Media Services P.O. Box 358350 Pittsburgh, PA 15251-5350
(ii) Short Forms (per station license)	FCC 155, 316	$80	MDT	Federal Communications Commission Mass Media Services P.O. Box 358350 Pittsburgh, PA 15251-5350
f. License Renewal (per application)	FCC 155, 303-S	$100	MGT	Federal Communications Commission Mass Media Services P.O. Box 358165 Pittsburgh, PA 15251-5165

3595

ACTION	FCC FORM NUMBER	FEE AMOUNT	FEE TYPE CODE	ADDRESS
g. Call Sign (New or Modification) (per application)	FCC 155, Corres.	$55	MBT	Federal Communications Commission Mass Media Services P.O. Box 358165 Pittsburgh, PA 15251-5165
h. Special Temporary Authorization (other than to remain silent or extend an existing STA to remain silent) (per application)	FCC 155, Corres.	$100	MGT	Federal Communications Commission Mass Media Services P.O. Box 358165 Pittsburgh, PA 15251-5165
i. Extension of Time to Construct or Replacement of Construction Permit (per application)	FCC 155, 307	$200	MKT	Federal Communications Commission Mass Media Services P.O. Box 358165 Pittsburgh, PA 15251-5165
j. Permit to Deliver Programs to Foreign Broadcast Stations (per application)	FCC 155, 308	$55	MBT	Federal Communications Commission Mass Media Services P.O. Box 358190 Pittsburgh, PA 15251-5190
k. Petition for Rulemaking for New Community of License (per application)	FCC 155, 301/302	$1,565	MRT	Federal Communications Commission Mass Media Services P.O. Box 358165 Pittsburgh, PA 15251-5165
l. Ownership Report . . (per annual report)	FCC 155, 323	$35	MAT	Federal Communications Commission Mass Media Services P.O. Box 358180 Pittsburgh, PA 15251-5180
2. Commercial Radio Stations				
a. New or Major Change Construction Permit				
(1) AM Station (per application)	FCC 155, 301	$2,255	MUR	Federal Communications Commission Mass Media Services P.O. Box 358190 Pittsburgh, PA 15251-5190

ACTION	FCC FORM NUMBER	FEE AMOUNT	FEE TYPE CODE	ADDRESS

ACTION	FCC FORM NUMBER	FEE AMOUNT	FEE TYPE CODE	ADDRESS
(ii) FM Station (per application)	FCC 155, 301	$2,030	MTR	Federal Communications Commission Mass Media Services P.O. Box 358195 Pittsburgh, PA 15251-5195
b. Minor Change				
(i) AM Station (per application)	FCC 155, 301	$565	MPR	Federal Communications Commission Mass Media Services P.O. Box 358190 Pittsburgh, PA 15251-5190
(ii) FM Station (per application)	FCC 155, 301	$565	MPR	Federal Communications Commission Mass Media Services P.O. Box 358195 Pittsburgh, PA 15251-5195
c. Hearing (Major/Minor Change, Comparative New, or Comparative Renewal) (per application)	FCC 155, Corres.	$6,760	MWR	Federal Communications Commission Mass Media Services P.O. Box 358170 Pittsburgh, PA 15251-5170
d. License				
(i) AM (per application)	FCC 155, 302	$370	MMR	Federal Communications Commission Mass Media Services P.O. Box 358190 Pittsburgh, PA 15251-5190
(ii) FM (per application)	FCC 155, 302	$115	MHR	Federal Communications Commission Mass Media Services P.O. Box 358195 Pittsburgh, PA 15251-5195
(iii) AM Directional Antenna (per application)	FCC 155, 302	$425	MOR	Federal Communications Commission Mass Media Services P.O. Box 358190 Pittsburgh, PA 15251-5190

ACTION	FCC FORM NUMBER	FEE AMOUNT	FEE TYPE CODE	ADDRESS
(iv) FM Directional Antenna (per application)	FCC 155, 302	$355	MLR	Federal Communications Commission Mass Media Services P.O. Box 358195 Pittsburgh, PA 15251-5195
(v) AM Remote Control (per application)	FCC 155, 301/301-A	$35	MAR	Federal Communications Commission Mass Media Services P.O. Box 358190 Pittsburgh, PA 15251-5190
e. License Assignment or Transfer				
(i) AM Stations				
Long Forms (per station license)	FCC 155, 314/315	$565	MPR	Federal Communications Commission Mass Media Services P.O. Box 358350 Pittsburgh, PA 15251-5350
Short Forms (per station license)	FCC 155, 316	$80	MDR	Federal Communications Commission Mass Media Services P.O. Box 358350 Pittsburgh, PA 15251-5350
(ii) FM Stations				
Long Forms (per station license)	FCC 155, 314/315	$565	MPR	Federal Communications Commission Mass Media Services P.O. Box 358350 Pittsburgh, PA 15251-5350
Short Forms (per station license)	FCC 155, 316	$80	MDR	Federal Communications Commission Mass Media Services P.O. Box 358350 Pittsburgh, PA 15251-5350

ACTION	FCC FORM NUMBER	FEE AMOUNT	FEE TYPE CODE	ADDRESS
f. License Renewal				
(i) AM Stations (per application)	FCC 155, 303-S	$100	MGR	Federal Communications Commission Mass Media Services P.O. Box 358190 Pittsburgh, PA 15251-5190
(ii) FM Stations (per application)	FCC 155, 303-S	$100	MGR	Federal Communications Commission Mass Media Services P.O. Box 358195 Pittsburgh, PA 15251-5195
g. Call Sign (New or Modification) (per application)	FCC 155, Corres.	$55	MBR	Federal Communications Commission Mass Media Services P.O. Box 358165 Pittsburgh, PA 15251-5165
h. Special Temporary Authorization (other than to remain silent or extend an existing STA to remain silent)				
(i) AM Stations (per application)	FCC 155, Corres.	$100	MGR	Federal Communications Commission Mass Media Services P.O. Box 358190 Pittsburgh, PA 15251-5190
(ii) FM Stations (per application)	FCC 155, Corres.	$100	MGR	Federal Communications Commission Mass Media Services P.O. Box 358195 Pittsburgh, PA 15251-5195
i. Extension of Time to Construct or Replacement of Construction Permit				
(i) AM Stations (per application)	FCC 155, 307	$200	MKR	Federal Communications Commission Mass Media Services P.O. Box 358190 Pittsburgh, PA 15251-5190

ACTION	FCC FORM NUMBER	FEE AMOUNT	FEE TYPE CODE	ADDRESS
(ii) FM Stations (per application)	FCC 155, 307	$200	MKR	Federal Communications Commission Mass Media Services P.O. Box 358195 Pittsburgh, PA 15251-5195
j. Permit to Deliver Programs to Foreign Broadcast Stations				
(i) AM Stations (per application)	FCC 155, 308	$55	MBR	Federal Communications Commission Mass Media Services P.O. Box 358190 Pittsburgh, PA 15251-5190
(ii) FM Stations (per application)	FCC 155, 308	$55	MBR	Federal Communications Commission Mass Media Services P.O. Box 358190 Pittsburgh, PA 15251-5190
k. Petition for Rulemaking for New Community of License Or Higher Class Channel (per petition)	FCC 155, 301/302	$1,565	MRR	Federal Communications Commission Mass Media Services P.O. Box 358195 Pittsburgh, PA 15251-5195
l. Ownership Report (per annual report)	FCC 155, 323	$35	MAR	Federal Communications Commission Mass Media Services P.O. Box 358180 Pittsburgh, PA 15251-5180
3. FM Translators				
a. New and Major Change Construction Permits (per application)	FCC 155, 349	$425	MOF	Federal Communications Commission Mass Media Services P.O. Box 358200 Pittsburgh, PA 15251-5200
b. License (per application)	FCC 155, 350	$85	MEF	Federal Communications Commission Mass Media Services P.O. Box 358200 Pittsburgh, PA 15251-5200

Mass Media Services
P.O. Box 358200
Pittsburgh, PA 15251-5200

ACTION	FCC FORM NUMBER	FEE AMOUNT	FEE TYPE CODE	ADDRESS
c. Assignment or Transfer (per station license	FCC 155, 345/316	$80	MDF	Federal Communications Commission Mass Media Services P.O. Box 358350 Pittsburgh, PA 15251-5350
d. License Renewal (per application)	FCC 155, 348	$35	MAF	Federal Communications Commission Mass Media Services P.O. Box 358200 Pittsburgh, PA 15251-5200
e. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent) (per application)	FCC 155, Corres.	$100	MGF	Federal Communications Commission Mass Media Services P.O. Box 358200 Pittsburgh, PA 15251-5200
4. TV Translators and LPTV Stations				
a. New and Major Change Construction Permits (per application)	FCC 155, 346	$425	MOL	Federal Communications Commission Mass Media Services P.O. Box 358185 Pittsburgh, PA 15251-5185
b. License (per application)	FCC 155, 347	$85	MEL	Federal Communications Commission Mass Media Services P.O. Box 358185 Pittsburgh, PA 15251-5185
c. Assignment or Transfer (per station license)	FCC 155, 345/316	$80	MDL	Federal Communications Commission Mass Media Services P.O. Box 358350 Pittsburgh, PA 15251-5360
d. License Renewal (per application)	FCC 155, 348	$35	MAL	Federal Communications Commission Mass Media Services P.O. Box 358185 Pittsburgh, PA 15251-5185
e. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent) (per application)	FCC 155, Corres.	$100	MGL	Federal Communications Commission Mass Media Services P.O. Box 358185 Pittsburgh, PA 15251-5185

ACTION	FCC FORM NUMBER	FEE AMOUNT	FEE TYPE CODE	ADDRESS
5. Auxiliary Services (includes Remote Pickup stations, TV Auxiliary Broadcast stations, Aural Broadcast stations, Aural Broadcast STL and Intercity Relay stations, and Low Power Auxiliary)				
a. Major Action (per application)	FCC 155, 313	$85	MEA	Federal Communications Commission Mass Media Services P.O. Box 358200 Pittsburgh, PA 15251-5200
b. License Renewal (per application)	FCC 155, 313-R	$35	MAA	Federal Communications Commission Mass Media Services P.O. Box 358200 Pittsburgh, PA 15251-5200
c. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent) (per application)	FCC 155, Corres.	$100	MGA	Federal Communications Commission Mass Media Services P.O. Box 358200 Pittsburgh, PA 15251-5200
6. FM Booster Stations				
a. New and Major Change Construction Permits (per application)	FCC 155, 349	$425	MOF	Federal Communications Commission Mass Media Services P.O. Box 358200 Pittsburgh, PA 15251-5200
b. License (per application)	FCC 155, 350	$85	MEF	Federal Communications Commission Mass Media Services P.O. Box 358200 Pittsburgh, PA 15251-5200
c. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent) (per application)	FCC 155, Corres.	$100	MGF	Federal Communications Commission Mass Media Services P.O. Box 358200 Pittsburgh, PA 15251-5200
7. TV Booster Stations				
a. New and Major Change Construction Permits (per application)	FCC 155, 346	$425	MOF	Federal Communications Commission Mass Media Services P.O. Box 358185 Pittsburgh, PA 15251-5185

P.O. Box 358185
Pittsburgh, PA 15251-5185

ACTION	FCC FORM NUMBER	FEE AMOUNT	FEE TYPE CODE	ADDRESS
b. License (per application)	FCC 155, 347	$85	MEF	Federal Communications Commission Mass Media Services P.O. Box 358185 Pittsburgh, PA 15251-5185
c. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent) (per application)	FCC 155, Corres.	$100	MGF	Federal Communications Commission Mass Media Services P.O. Box 358185 Pittsburgh, PA 15251-5185
8. International Broadcast Stations				
a. New Construction Permit and Facilities Changes CP (per application)	FCC 155, 309	$1,705	MSN	Federal Communications Commission Mass Media Services P.O. Box 358190 Pittsburgh, PA 15251-5190
b. License (per application)	FCC 155, 310	$385	MNN	Federal Communications Commission Mass Media Services P.O. Box 358190 Pittsburgh, PA 15251-5190
c. Assignment or Transfer (per station license)	FCC 155, 314/315/316	$60	MCN	Federal Communications Commission Mass Media Services P.O. Box 358190 Pittsburgh, PA 15251-5190
d. License Renewal (per application)	FCC 155, 311	$95	MFN	Federal Communications Commission Mass Media Services P.O. Box 358190 Pittsburgh, PA 15251-5190
e. Frequency Assignment and Coordination (per frequency hour)	FCC 155, Corres.	$35	MAN	Federal Communications Commission Mass Media Services P.O. Box 358175 Pittsburgh, PA 15251-5175
f. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent) (per application)	FCC 155, Corres.	$100	MGN	Federal Communications Commission Mass Media Services P.O. Box 358175 Pittsburgh, PA 15251-5175

ACTION	FCC FORM NUMBER	FEE AMOUNT	FEE TYPE CODE	ADDRESS
9. Cable Television Relay Service (CARS)				
a. Cable Television Relay Service				
(i) Construction Permit (per application)	FCC 155, 327	$155	MIC	Federal Communications Commission Mass Media Services P.O. Box 358205 Pittsburgh, PA 15251-5205
(ii) Assignment or Transfer (per station license)	FCC 155, 327	$155	MIC	Federal Communications Commission Mass Media Services P.O. Box 358205 Pittsburgh, PA 15251-5205
(iii) License Renewal (per application)	FCC 155, 327	$155	MIC	Federal Communications Commission Mass Media Services P.O. Box 358205 Pittsburgh, PA 15251-5205
(iv) Modification (per application)	FCC 155, 327	$155	MIC	Federal Communications Commission Mass Media Services P.O. Box 358205 Pittsburgh, PA 15251-5205
(v) Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent) (per application)	FCC 155, Corres.	$100	MGC	Federal Communications Commission Mass Media Services P.O. Box 358205 Pittsburgh, PA 15251-5205
b. Cable Special Relief Petitions (per petition)	FCC 155, Corres.	$790	MQC	Federal Communications Commission Mass Media Services P.O. Box 358205 Pittsburgh, PA 15251-5205
c. 76.12 Registration Statements (per statement)	FCC 155, Corres.	$35	MAC	Federal Communications Commission Mass Media Services P.O. Box 358205 Pittsburgh, PA 15251-5205

ACTION | FCC FORM NUMBER | FEE AMOUNT | FEE TYPE CODE | ADDRESS

P.O. Box 358205
Pittsburgh, PA 15251-5205

ACTION	FCC FORM NUMBER	FEE AMOUNT	FEE TYPE CODE	ADDRESS
d. Aeronautical Frequency Usage Notifications (per notification)	FCC 155, Corres.	$35	MAC	Federal Communications Commission Mass Media Services P.O. Box 358205 Pittsburgh, PA 15251-5205
e. Aeronautical Frequency Usage Waivers (per waiver)	FCC 155, Corres.	$35	MAC	Federal Communications Commission Mass Media Services P.O. Box 358205 Pittsburgh, PA 15251-5205
10. Direct Broadcast Satellites				
a. New or Major Change Construction Permit				
(i) Application for Authorization to Construct a Direct Broadcast Satellite (per request)	FCC 155, Corres.	$2,030	MTD	Federal Communications Commission Mass Media Services P.O. Box 358210 Pittsburgh, PA 15251-5210
(ii) Issuance of Construction Permit and Launch Authority (per request)	FCC 155, Corres.	$19,710	MXD	Federal Communications Commission Mass Media Services P.O. Box 358210 Pittsburgh, PA 15251-5210
(iii) License to Operate Satellite (per request)	FCC 155, Corres.	$565	MPD	Federal Communications Commission Mass Media Services P.O. Box 358210 Pittsburgh, PA 15251-5210
b. Hearing (Comparative New, Major/Minor Modifications, or Comparative Renewal) (per application)	FCC 155, Corres.	$6,760	MWD	Federal Communications Commission Mass Media Services P.O. Box 358170 Pittsburgh, PA 15251-5170
c. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent) (per application)	FCC 155, Corres.	$100	MGD	Federal Communications Commission Mass Media Services P.O. Box 358210 Pittsburgh, PA 15251-5210

12. Section 1.1105 is revised in its entirirety to read as follows:

¶ 1.1105 Schedule of Charges for common carrier services.

FCC Form Number	Fee Amount	Fee Type Code	Address

¶ 1.1105 Schedule of Charges for common carrier services.

Action	FCC Form Number	Fee Amount	Fee Type Code	Address
1. All Common Carrier Services				
a. Hearing (Comparative New or Major/Minor Modifications).....	FCC 155	$ 6,760.00	BHZ	Federal Communications Commission Common Carrier Hearings P.O. Box 358125 Pittsburgh, PA 15251-5125
b. Developmental Authority.....	Same charge as regular authority in service unless otherwise indicated			
c. Formal Complaints and Pole Attachment Complaints Filing Fee.....	Written Request & FCC 155	120.00	CIZ	Federal Communications Commission Common Carrier Enforcement P.O. Box 358120 Pittsburgh, PA 15251-5120
2. Domestic Public Land Mobile Stations (includes Base, Dispatch, Control and Repeater Stations)				
a. New or Additional Facility (per transmitter)..	FCC 401 & FCC 155	230.00	CMD	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
b. Major Modifications (per transmitter).....	FCC 401 & FCC 155	230.00	CMD	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
c. Fill In Transmitters (per transmitter).....	FCC 401 & FCC 155 or FCC 489 & FCC 155	230.00	CMD	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
d. Major Amendment to a Pending Application (per transmitter).....	FCC 401 & FCC 155	230.00	CMD	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130

	FCC Form Number	Fee Amount	Fee Type Code	Address
e. Assignment or Transfer (i) First Call Sign on Application.....	FCC 490 & FCC 155	$ 230.00	CMD	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
(ii) Each Additional Call Sign.....	Same as 2e(i)	35.00	CAD	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
f. Partial Assignment (per call sign).....	FCC 401 & FCC 490 & FCC 155	230.00	CMD	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
g. Renewal (per call sign).....	FCC 405 & FCC 155	35.00	CAD	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
h. Minor Modifications (per transmitter).....	FCC 489 & FCC 155	35.00	CAD	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
i. Special Temporary Authority (per frequency/per location).....	Written Request & FCC 155	200.00	CLD	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
j. Extension of Time to Construct (per application).....	FCC 489 & FCC 155	35.00	CAD	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130

	FCC Form Number	Fee Amount	Fee Type Code	Address

	FCC Form Number	Fee Amount	Fee Type Code	Address
k. Notice of Completion of Construction (per application).....	FCC 489 & FCC 155	$ 35.00	CAD	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
l. Auxiliary Test Station (per transmitter).....	FCC 401 & FCC 155	200.00	CLD	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
m. Subsidiary Communications Service (per request).....	FCC 401 & FCC 155	100.00	CFD	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
n. Reinstatement (per application).....	FCC 489 & FCC 155 or FCC 401 & FCC 155	35.00	CAD	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
o. Combining Call Signs (per call sign).....	FCC 489 & FCC 155	200.00	CLD	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
p. Standby Transmitter (per transmitter/per location).....	FCC 401 & FCC 155	200.00	CLD	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
q. 900 MHz Nationwide Paging (i) Renewal (1) Network Organizer.....	FCC 405 & FCC 155	35.00	CAD	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130

	FCC Form Number	Fee Amount	Fee Type Code	Address
(2) Network Operator (per operator/per city).....	Same as 2q(i)(1)	$ 35.00	CAD	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
r. Air-Ground Individual License (per station)				
(i) Initial License.....	FCC 409 & FCC 155	35.00	CAD	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
(ii) Renewal of License.....	FCC 409 & FCC 155	35.00	CAD	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
(iii) Modification of License.....	FCC 409 & FCC 155	35.00	CAD	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
3. Cellular Systems (per system)				
a. New or Additional Facilities.....	FCC 401 & FCC 155	230.00	CMC	Federal Communications Commission Cellular Systems P.O. Box 358135 Pittsburgh, PA 15251-5135
b. Major Modifications.....	FCC 401 & FCC 155	230.00	CMC	Federal Communications Commission Cellular Systems P.O. Box 358135 Pittsburgh, PA 15251-5135
c. Minor Modifications.....	FCC 489 & FCC 155	60.00	CDC	Federal Communications Commission Cellular Systems P.O. Box 358135 Pittsburgh, PA 15251-5135

	FCC Form Number	Fee Amount	Fee Type Code	Address

	FCC Form Number	Fee Amount	Fee Type Code	Address
d. Assignment or Transfer (including partial)....	FCC 490 & FCC 155	$ 230.00	CMC	Federal Communications Commission Cellular Systems P.O. Box 358135 Pittsburgh, PA 15251-5135
e. License to Cover Construction				
(i) Initial License for Wireline Carrier.....	FCC 489 & FCC 155	595.00	CTC	Federal Communications Commission Cellular Systems P.O. Box 358135 Pittsburgh, PA 15251-5135
(ii) Subsequent License for Wireline Carrier.	FCC 489 & FCC 155	60.00	CDC	Federal Communications Commission Cellular Systems P.O. Box 358135 Pittsburgh, PA 15251-5135
(iii) License for Nonwireline Carrier.....	FCC 489 & FCC 155	60.00	CDC	Federal Communications Commission Cellular Systems P.O. Box 358135 Pittsburgh, PA 15251-5135
(iv) Fill In License (all carriers).....	FCC 489 & FCC 155	60.00	CDC	Federal Communications Commission Cellular Systems P.O. Box 358135 Pittsburgh, PA 15251-5135
f. Renewal	FCC 405 & FCC 155	35.00	CAC	Federal Communications Commission Cellular Systems P.O. Box 358135 Pittsburgh, PA 15251-5135
g. Extension of Time to Complete Construction....	FCC 489 & FCC 155	35.00	CAC	Federal Communications Commission Cellular Systems P.O. Box 358135 Pittsburgh, PA 15251-5135
h. Special Temporary Authority (per system).....	Written Request & FCC 155	200.00	CLC	Federal Communications Commission Cellular Systems P.O. Box 358135 Pittsburgh, PA 15251-5135

	Form Number	Fee Amount	Fee Type Code	Address
i. Combining Cellular Geographic Service Areas (per system).....	Written Request & FCC 155	$ 50.00	CBC	Federal Communications Commission Cellular Systems P.O. Box 358135 Pittsburgh, PA 15251-5135
4. Rural Radio (includes Central Office, Interoffice, or Relay Facilities)				
a. New or Additional Facility (per transmitter)..	FCC 401 & FCC 155	105.00	CGR	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
b. Major Modifications (per transmitter).....	FCC 401 & FCC 155	105.00	CGR	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
c. Major Amendment to a Pending Application (per transmitter).....	FCC 401 & FCC 155	105.00	CGR	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
d. Minor Modifications (per transmitter).....	FCC 489 & FCC 155	35.00	CAR	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
e. Assignment or Transfer (i) First Call Sign on Application.....	FCC 490 & FCC 155	105.00	CGR	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
(ii) Each Additional Call Sign.....	Same as 4e(i)	35.00	CAR	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130

	FCC Form Number	Fee Amount	Fee Type Code	Address

	FCC Form Number	Fee Amount	Fee Type Code	Address
(iii) Partial Assignment (per call sign).....	FCC 401 & FCC 490 & FCC 155	$ 105.00	CGR	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
f. Renewal (per call sign).....	FCC 405 & FCC 155	35.00	CAR	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
g. Extension of Time to Construct (per application).....	FCC 489 & FCC 155	35.00	CAR	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
h. Notice of Completion of Construction (per application).....	FCC 489 & FCC 155	35.00	CAR	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
i. Special Temporary Authority (per frequency/per location).....	Written Request & FCC 155	200.00	CLR	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
j. Reinstatement (per application).....	FCC 489 & FCC 155 or FCC 401 & FCC 155	35.00	CAR	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
k. Combining Call Signs (per call sign).....	FCC 489 & FCC 155	200.00	CLR	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130

	FCC Form Number	Fee Amount	Fee Type Code	Address
l. Auxiliary Test Station (per transmitter).....	FCC 401 & FCC 155	$ 200.00	CLR	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
m. Standby Transmitter (per transmitter/per location).....	FCC 401 & FCC 155	200.00	CLR	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
5. Offshore Radio Service (Mobile, Subscriber, and Central Stations; fees would also apply to any expansion of this service into coastal waters other than the Gulf of Mexico)				
a. New or Additional Facility (per transmitter)..	FCC 401 & FCC 155	105.00	CGF	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
b. Major Modifications (per transmitter).....	FCC 401 & FCC 155	105.00	CGF	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
c. Fill In Transmitters (per transmitter).....	FCC 401 & FCC 155 or FCC 489 & FCC 155	105.00	CGF	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
d. Major Amendment to a Pending Application (per transmitter).....	FCC 401 & FCC 155	105.00	CGF	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
e. Minor Modifications (per transmitter).....	FCC 489 & FCC 155	35.00	CAF	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130

	FCC Form Number	Fee Amount	Fee Type Code	Address

	FCC Form Number	Fee Amount	Fee Type Code	Address
f. Assignment or Transfer				
(i) First Call Sign on Application.....	FCC 490 & FCC 155	$ 105.00	CGF	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
(ii) Each Additional Call Sign.....	Same as 5f(i)	35.00	CAF	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
(iii) Partial Assignment (per call sign).....	FCC 401 & FCC 490 & FCC 155	105.00	CGF	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
g. Renewal (per call sign).....	FCC 405 & FCC 155	35.00	CAF	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
h. Extension of Time to Construct (per application).....	FCC 489 & FCC 155	35.00	CAF	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
i. Reinstatement (per application).....	FCC 489 & FCC 155 or FCC 401 & FCC 155	35.00	CAF	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
j. Notice of Completion of Construction (per application).....	FCC 489 & FCC 155	35.00	CAF	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130

	FCC Form Number	Fee Amount	Fee Type Code	Address
k. Special Temporary Authority (per frequency/per location).....	Written Request & FCC 155	$ 200.00	CLF	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
l. Combining Call Signs (per call sign).....	FCC 489 & FCC 155	200.00	CLF	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
m. Auxiliary Test Station (per transmitter).....	FCC 401 & FCC 155	200.00	CLF	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
n. Standby Transmitter (per transmitter/per location).....	FCC 401 & FCC 155	200.00	CLF	Federal Communications Commission Common Carrier Land Mobile P.O. Box 358130 Pittsburgh, PA 15251-5130
6. Point-to-Point Microwave and Local Television Radio Service				
a. Conditional License (per station).....	FCC 494 & FCC 155	155.00	CJP	Federal Communications Commission Common Carrier Domestic Radio P.O. Box 358155 Pittsburgh, PA 15251-5155
b. Major Modification of Conditional License or License Authorization (per station).....	FCC 494 & FCC 155	155.00	CJP	Federal Communications Commission Common Carrier Domestic Radio P.O. Box 358155 Pittsburgh, PA 15251-5155
c. Certificate of Completion of Construction (per station).....	FCC 494-A & FCC 155	155.00	CJP	Federal Communications Commission Common Carrier Domestic Radio P.O. Box 358155 Pittsburgh, PA 15251-5155

	FCC Form Number	Fee Amount	Fee Type Code	Address
d. Renewal (per licensed station).....	FCC 405 & FCC 155	$ 155.00	CJP	Federal Communications Commission Common Carrier Domestic Radio P.O. Box 358155 Pittsburgh, PA 15251-5155
e. Assignment or Transfer (i) First Station on Application.....	FCC 702 & FCC 155 or FCC 704 & FCC 155	55.00	CCP	Federal Communications Commission Common Carrier Domestic Radio P.O. Box 358155 Pittsburgh, PA 15251-5155
(ii) Each Additional Station.....	Same as 6e(i)	35.00	CAP	Federal Communications Commission Common Carrier Domestic Radio P.O. Box 358155 Pittsburgh, PA 15251-5155
f. Extension of Construction Authorization (per station).....	FCC 701 & FCC 155	55.00	CCP	Federal Communications Commission Common Carrier Domestic Radio P.O. Box 358155 Pittsburgh, PA 15251-5155
g. Special Temporary Authority or Request for Waiver of Prior Construction Authorization (per request).....	Written Request & FCC 155	70.00	CEP	Federal Communications Commission Common Carrier Domestic Radio P.O. Box 358155 Pittsburgh, PA 15251-5155
7. Multipoint Distribution Service (including multichannel MDS) a. Conditional License (per station).....	FCC 494 & FCC 155	155.00	CJM	Federal Communications Commission Common Carrier Domestic Radio P.O. Box 358155 Pittsburgh, PA 15251-5155

	FCC Form Number	Fee Amount	Fee Type Code	Address
b. Major Modification of Conditional License or License Authorization (per station).....	FCC 494 & FCC 155	$ 155.00	CJM	Federal Communications Commission Common Carrier Domestic Radio P.O. Box 358155 Pittsburgh, PA 15251-5155
c. Certificate of Completion of Construction (per channel).....	FCC 494-A & FCC 155	455.00	CPM	Federal Communications Commission Common Carrier Domestic Radio P.O. Box 358155 Pittsburgh, PA 15251-5155
d. Renewal (per licensed station).....	FCC 405 & FCC 155	155.00	CJM	Federal Communications Commission Common Carrier Domestic Radio P.O. Box 358155 Pittsburgh, PA 15251-5155
e. Assignment or Transfer (i) First Station on Application.....	FCC 702 & FCC 155 or FCC 704 & FCC 155	55.00	CCM	Federal Communications Commission Common Carrier Domestic Radio P.O. Box 358155 Pittsburgh, PA 15251-5155
(ii) Each Additional Station.....	Same as 7e(i)	35.00	CAM	Federal Communications Commission Common Carrier Domestic Radio P.O. Box 358155 Pittsburgh, PA 15251-5155
f. Extension of Construction Authorization (per station).....	FCC 701 & FCC 155	110.00	CCM	Federal Communications Commission Common Carrier Domestic Radio P.O. Box 358155 Pittsburgh, PA 15251-5155
g. Special Temporary Authority or Request for Waiver of Prior Construction Authorization (per request).....	Written Request & FCC 155	70.00	CEM	Federal Communications Commission Common Carrier Domestic Radio P.O. Box 358155 Pittsburgh, PA 15251-5155

	FCC Form Number	Fee Amount	Fee Type Code	Address

	FCC Form Number	Fee Amount	Fee Type Code	Address
8. Digital Electronic Message Service				
a. Conditional License (per nodal station).....	FCC 494 & FCC 155	$ 155.00	CJL	Federal Communications Commission Common Carrier Domestic Radio P.O. Box 358155 Pittsburgh, PA 15251-5155
b. Major Modification of Conditional License or License Authorization (per nodal station)....	FCC 494 & FCC 155	155.00	CJL	Federal Communications Commission Common Carrier Domestic Radio P.O. Box 358155 Pittsburgh, PA 15251-5155
c. Certificate of Completion of Construction (per nodal station).....	FCC 494-A & FCC 155	155.00	CJL	Federal Communications Commission Common Carrier Domestic Radio P.O. Box 358155 Pittsburgh, PA 15251-5155
d. Renewal (per licensed nodal station).....	FCC 405 & FCC 155	155.00	CJL	Federal Communications Commission Common Carrier Domestic Radio P.O. Box 358155 Pittsburgh, PA 15251-5155
e. Assignment or Transfer (i) First Station on Application.....	FCC 702 & FCC 155 or FCC 704 & FCC 155	55.00	CCL	Federal Communications Commission Common Carrier Domestic Radio P.O. Box 358155 Pittsburgh, PA 15251-5155
(ii) Each Additional Station.....	Same as 8e(i)	35.00	CAL	Federal Communications Commission Common Carrier Domestic Radio P.O. Box 358155 Pittsburgh, PA 15251-5155
f. Extension of Construction Authorization (per station).....	FCC 701 & FCC 155	55.00	CCL	Federal Communications Commission Common Carrier Domestic Radio P.O. Box 358155 Pittsburgh, PA 15251-5155

	FCC Form Number	Fee Amount	Fee Type Code	Address
g. Special Temporary Authority or Request for Waiver of Prior Construction Authorization (per request).....	Written Request & FCC 155	$ 70.00	CEL	Federal Communications Commission Common Carrier Domestic Radio P.O. Box 358155 Pittsburgh, PA 15251-5155
9. International Fixed Public Radio (Public & Control Stations)				
a. Initial Construction Permit (per station).....	FCC 407 & FCC 155	510.00	CSN	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115
b. Assignment or Transfer (per application).....	FCC 702 & FCC 155 or FCC 704 & FCC 155	510.00	CSN	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115
c. Renewal (per license).....	FCC 405 & FCC 155	370.00	CON	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115
d. Modification (per station).....	FCC 403 & FCC 155	370.00	CON	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115
e. Extension of Construction Authorization (per station).....	FCC 701 & FCC 155	185.00	CKN	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115
f. Special Temporary Authority or Request for Waiver (per request).....	Written Request & FCC 155	185.00	CKN	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115

	FCC Form Number	Fee Amount	Fee Type Code	Address

	FCC Form Number	Fee Amount	Fee Type Code	Address
10. Fixed Satellite Transmit/Receive Earth Stations				
a. Initial Application (per station)				
Domestic.....	FCC 493 & FCC 155	$ 1,525.00	BAX	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
International.....	FCC 493 & FCC 155	1,525.00	BAX	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115
b. Modification of License (per station)				
Domestic.....	FCC 493 & FCC 155	105.00	CGX	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
International.....	FCC 493 & FCC 155	105.00	CGX	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115
c. Assignment or Transfer				
(i) First Station on Application				
Domestic.....	FCC 702 & FCC 155 or FCC 704 & FCC 155	300.00	CNX	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
International.....	FCC 702 & FCC 155 or FCC 704 & FCC 155	300.00	CNX	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115
(ii) Each Additional Station				
Domestic.....	Same as 10c(i)	100.00	CFX	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160

	FCC Form Number	Fee Amount	Fee Type Code	Address
International	Same as 10c(i)	$ 100.00	CFX	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115
d. Developmental Station (per station)				
Domestic	FCC 493 & FCC 155	1,000.00	CWX	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
International	FCC 493 & FCC 155	1,000.00	CWX	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115
e. Renewal of License (per station)				
Domestic	FCC 405 & FCC 155	105.00	CGX	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
International	FCC 405 & FCC 155	105.00	CGX	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115
f. Special Temporary Authority or Waiver of Prior Construction Authorization (per request)				
Domestic	Written Request & FCC 155	105.00	CGX	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
International	Written Request & FCC 155	105.00	CGX	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115

	FCC Form Number	Fee Amount	Fee Type Code	Address

	FCC Form Number	Fee Amount	Fee Type Code	Address
g. Amendment of Application (per station)				
Domestic.....	Written Request & FCC 155	$ 105.00	CGX	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
International.....	Written Request & FCC 155	105.00	CGX	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115
h. Extension of Construction Permit (per station)				
Domestic.....	FCC 701 & FCC 155	105.00	CGX	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
International.....	FCC 701 & FCC 155	105.00	CGX	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115
11. Small Transmit/Receive Earth Stations (2 meters or less and operating inn the 4/6GHz frequency band)				
a. Lead Application.....	FCC 493 & FCC 155	3,380.00	BDS	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
b. Routine Application (per station).....	FCC 493 & FCC 155	35.00	CAS	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
c. Modification of License (per station).....	FCC 493 & FCC 155	105.00	CGS	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160

	FCC Form Number	Fee Amount	Fee Type Code	Address
d. Assignment or Transfer (i) First Station on Application.....	FCC 702 & FCC 155 or FCC 704 & FCC 155	$ 300.00	CNS	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
(ii) Each Additional Station.....	Same as 11d(i)	35.00	CAS	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
e. Developmental Station (per station).....	FCC 493 & FCC 155	1,000.00	CWS	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
f. Renewal of License (per station).....	FCC 405 & FCC 155	105.00	CGS	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
g. Special Temporary Authority or Waiver of Prior Construction Authorization (per request).....	Written Request & FCC 155	105.00	CGS	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
h. Amendment of Application (per station).....	Written Request & FCC 155	105.00	CGS	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
i. Extension of Construction Permit (per station)	FCC 701 & FCC 155	105.00	CGS	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160

	FCC Form Number	Fee Amount	Fee Type Code	Address
12. Receive Only Earth Stations				
a. Initial Application for Registration				
Domestic.....	FCC 493 & FCC 155	$ 230.00	CMO	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
International.....	FCC 493 & FCC 155	230.00	CMO	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115
b. Modification of License or Registration (per station)				
Domestic.....	FCC 493 & FCC 155	105.00	CGO	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
International.....	FCC 493 & FCC 155	105.00	CGO	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115
c. Assignment or Transfer				
(i) First Station on Application				
Domestic.....	FCC 702 & FCC 155 or FCC 704 & FCC 155	300.00	CNO	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
International.....	FCC 702 & FCC 155 or FCC 704 & FCC 155	300.00	CNO	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115
(ii) Each Additional Station				
Domestic.....	Same as 12c(i)	100.00	CFO	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160

	FCC Form Number	Fee Amount	Fee Type Code	Address
International	Same as 12c(i)	$ 100.00	CFO	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115
d. Renewal of License (per station)				
Domestic	FCC 405 & FCC 155	105.00	CGO	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
International	FCC 405 & FCC 155	105.00	CGO	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115
e. Amendment of Application (per station)				
Domestic	Written Request & FCC 155	105.00	CGO	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
International	Written Request & FCC 155	105.00	CGO	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115
f. Extension of Construction Permit (per station)				
Domestic	FCC 701 & FCC 155	105.00	CGO	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
International	FCC 701 & FCC 155	105.00	CGO	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115

	FCC Form Number	Fee Amount	Fee Type Code	Address
g. Waivers (per request)				
Domestic.....	Written Request & FCC 155	$ 105.00	CGO	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
International.....	Written Request & FCC 155	105.00	CGO	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115
13. Very Small Aperture Terminal (VSAT) Systems				
a. Initial Application (per system).....	FCC 493 & FCC 155	5,630.00	BGV	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
b. Modification of License (per system).....	FCC 493 & FCC 155	105.00	CGV	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
c. Assignment or Transfer of System.....	FCC 702 & FCC 155 or FCC 704 & FCC 155	1,505.00	CZV	Federal Communications Commission Common Carrier Dom. Earth Station P.O. Box 358160 Pittsburgh, PA 15251-5160
d. Developmental Station	FCC 493 & FCC 155	1,000.00	CWV	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
e. Renewal of License (per system).....	FCC 405 & FCC 155	105.00	CGV	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160

	FCC Form Number	Fee Amount	Fee Type Code	Address
f. Special Temporary Authority or Waiver of Prior Construction Authorization (per request).....	Written Request & FCC 155	$ 105.00	CGV	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
g. Amendment of Application (per system).....	Written Request & FCC 155	105.00	CGV	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
h. Extension of Construction Permit (per system).	FCC 701 & FCC 155	105.00	CGV	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
14. Mobile Satellite Earth Stations				
a. Initial Application of Blanket Authorization..	FCC 493 & FCC 155	5,630.00	BGB	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
b. Initial Application for Individual Earth Station.....	FCC 493 & FCC 155	1,350.00	CYB	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
c. Modification of License (per system).....	FCC 493 & FCC 155	105.00	CGB	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
d. Assignment or Transfer (per system).....	FCC 702 & FCC 155 or FCC 704 & FCC 155	1,505.00	CZB	Federal Communications Commission Common Carrier Dom. Earth Station P.O. Box 358160 Pittsburgh, PA 15251-5160

	FCC Form Number	Fee Amount	Fee Type Code	Address

	FCC Form Number	Fee Amount	Fee Type Code	Address
e. Developmental Station	FCC 493 & FCC 155	$ 1,000.00	CWB	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
f. Renewal of License (per system).....	FCC 405 & FCC 155	105.00	CGB	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
g. Special Temporary Authority or Waiver of Prior Construction Authorization (per request).....	Written Request & FCC 155	105.00	CGB	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
h. Amendment of Application (per system).....	Written Request & FCC 155	105.00	CGB	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
i. Extension of Construction Permit (per system).	FCC 701 & FCC 155	105.00	CGB	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
15. Radiodetermination Satellite Earth Stations				
a. Initial Application of Blanket Authorization..	FCC 493 & FCC 155	5,630.00	BGH	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
b. Initial Application for Individual Earth Station.....	FCC 493 & FCC 155	1,350.00	CYH	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160

	FCC Form Number	Fee Amount	Fee Type Code	Address
c. Modification of License (per system).....	FCC 493 & FCC 155	$ 105.00	CGH	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
d. Assignment or Transfer (per system).....	FCC 702 & FCC 155 or FCC 704 & FCC 155	1,505.00	CZH	Federal Communications Commission Common Carrier Dom. Earth Station P.O. Box 358160 Pittsburgh, PA 15251-5160
e. Developmental Station	FCC 493 & FCC 155	1,000.00	CWH	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
f. Renewal of License (per system).....	FCC 405 & FCC 155	105.00	CGH	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
g. Special Temporary Authority or Waiver of Prior Construction Authorization (per request).....	Written Request & FCC 155	105.00	CGH	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
h. Amendment of Application (per system).....	Written Request & FCC 155	105.00	CGH	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160
i. Extension of Construction Permit (per system).	FCC 701 & FCC 155	105.00	CGH	Federal Communications Commission Common Carrier Dom. Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160

	FCC Form Number	Fee Amount	Fee Type Code	Address

	FCC Form Number	Fee Amount	Fee Type Code	Address
16. Space Stations				
a. Application for Authority to Construct				
Domestic.....	Written Request & FCC 155	$ 2,030.00	BBY	Federal Communications Commission Common Carrier Dom. Satellites P.O. Box 358160 Pittsburgh, PA 15251-5160
International.....	Written Request & FCC 155	2,030.00	BBY	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115
b. Application for Authority to Launch & Operate				
(i) Initial Application				
Domestic.....	Written Request & FCC 155	70,000.00	BNY	Federal Communications Commission Common Carrier Dom. Satellites P.O. Box 358160 Pittsburgh, PA 15251-5160
International.....	Written Request & FCC 155	70,000.00	BNY	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115
(ii) Replacement Satellite				
Domestic.....	Written Request & FCC 155	70,000.00	BNY	Federal Communications Commission Common Carrier Dom. Satellites P.O. Box 358160 Pittsburgh, PA 15251-5160
International.....	Written Request & FCC 155	70,000.00	BNY	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115
c. Assignment or Transfer (per satellite)				
Domestic.....	FCC 702 & FCC 155 or FCC 704 & FCC 155	5,000.00	BFY	Federal Communications Commission Common Carrier Dom. Satellites P.O. Box 358160 Pittsburgh, PA 15251-5160

	FCC Form Number	Fee Amount	Fee Type Code	Address
International	FCC 702 & FCC 155 or FCC 704 & FCC 155	$ 5,000.00	BFY	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115
d. Modification				
Domestic	Written Request & FCC 155	5,000.00	BFY	Federal Communications Commission Common Carrier Dom. Satellites P.O. Box 358160 Pittsburgh, PA 15251-5160
International	Written Request & FCC 155	5,000.00	BFY	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115
e. Special Temporary Authority or Waiver of Prior Construction Authorization (per request)				
Domestic	Written Request & FCC 155	500.00	CRY	Federal Communications Commission Common Carrier Dom. Satellites P.O. Box 358160 Pittsburgh, PA 15251-5160
International	Written Request & FCC 155	500.00	CRY	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115
f. Amendment of Application				
Domestic	Written Request & FCC 155	1,000.00	CWY	Federal Communications Commission Common Carrier Dom. Satellites P.O. Box 358160 Pittsburgh, PA 15251-5160
International	Written Request & FCC 155	1,000.00	CWY	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115

	FCC Form Number	Fee Amount	Fee Type Code	Address

	FCC Form Number	Fee Amount	Fee Type Code	Address
g. Extension of Construction Permit/Launch Authorization (per request)				
Domestic.....	Written Request & FCC 155	$ 500.00	CRY	Federal Communications Commission Common Carrier Dom. Satellites P.O. Box 358160 Pittsburgh, PA 15251-5160
International.....	Written Request & FCC 155	500.00	CRY	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115
17. Section 214 Applications				
a. Overseas Cable Construction.....	Written Request & FCC 155	9,125.00	BIT	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115
b. Cable Landing License				
(i) Common Carrier.....	Written Request & FCC 155	1,025.00	CXT	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115
(ii) Replacement Satellite.....	Written Request & FCC 155	10,150.00	BJT	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115
c. Domestic Cable Construction.....	Written Request & FCC 155	610.00	CUT	Federal Communications Commission Common Carrier Domestic Services P.O. Box 358145 Pittsburgh, PA 15251-5145
d. All Other 214 Applications Domestic.....	Written Request & FCC 155	610.00	CUT	Federal Communications Commission Common Carrier Domestic Services P.O. Box 358145 Pittsburgh, PA 15251-5145

	FCC Form Number	Fee Amount	Fee Type Code	Address
International	Written Request & FCC 155	$ 610.00	CUT	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115
e. Special Temporary Authority (all services)				
Domestic	Written Request & FCC 155	610.00	CUT	Federal Communications Commission Common Carrier Domestic Services P.O. Box 358145 Pittsburgh, PA 15251-5145
International	Written Request & FCC 155	610.00	CUT	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115
f. Assignments or Transfers (all services)				
Domestic	Written Request & FCC 155	610.00	CUT	Federal Communications Commission Common Carrier Domestic Services P.O. Box 358145 Pittsburgh, PA 15251-5145
International	Written Request & FCC 155	610.00	CUT	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115
18. Recognized Private Operating Status (per application)	Written Request & FCC 155	610.00	CUG	Federal Communications Commission Common Carrier International P.O. Box 358115 Pittsburgh, PA 15251-5115
19. Telephone Equipment Registration	FCC 730 & FCC 155	155.00	CJQ	Federal Communications Commission Common Carrier Domestic Services P.O. Box 358145 Pittsburgh, PA 15251-5145

	FCC Form Number	Fee Amount	Fee Type Code	Address

	FCC Form Number	Fee Amount	Fee Type Code	Address
20. Tariff Filings				
a. Filing Fee.....	Written Request & FCC 155	$ 490.00	CQK	Federal Communications Commission Tariff Filings P.O. Box 358150 Pittsburgh, PA 15251-5150
b. Special Permission Filing (per filing).....	Written Request & FCC 155	490.00	CQK	Federal Communications Commission Tariff Filings P.O. Box 358150 Pittsburgh, PA 15251-5150
21. Accounting and Audits				
a. Field Audit.....	N/A	62,290.00	N/A	Carriers will be billed
b. Review of Attest Audit.....	N/A	34,000.00	N/A	Carriers will be billed
c. Review of Depreciation Update Study (Single State).....	Written Study & FCC 155	20,685.00	BKA	Federal Communications Commission Accounting and Audits P.O. Box 358140 Pittsburgh, PA 15251-5140
(i) Each Additional State.....	Same as 21c	680.00	CVA	Federal Communications Commission Accounting and Audits P.O. Box 358140 Pittsburgh, PA 15251-5140
d. Interpretation of Accounting Rules (per request).....	Written Request & FCC 155	2,885.00	BCA	Federal Communications Commission Accounting and Audits P.O. Box 358140 Pittsburgh, PA 15251-5140
e. Petition for Waiver (per petition).....	Written Request & FCC 155	4,660.00	BEA	Federal Communications Commission Accounting and Audits P.O. Box 358140 Pittsburgh, PA 15251-5140

13. Section 1.1107 is amended by revising paragraph (a) and (b) to read as follows:

§1.1107 Payment of Charges

(a) Each application or other filing submitted to the Commission on or after May 21, 1990, for which a fee is prescribed by §§ 1.1102 through 1.1105 of this subpart must be accompanied by a remittance in the full amount of the fee due and FCC Form 155. Except that a separate Fee Form (FCC Form 155) will not be required once the information requirements of that form (the Fee Code, fee amount, and total fee remitted) are incorporated into the underlying application form. Note: This requirement for the simultaneous submission of fees with applications or other filings does not apply to the payment of fees for which the Commission has established a billing process. See § 1.1117 of this subpart.

(1) A single FCC Form 155 may be used when paying multiples of a single type of fee for authorizations that may be requested in one application or request and/or for up to five different authorizations (with different fee codes) that may be requested in the same application or request.

(2) Applications or requests subject to fees that are submitted without the FCC Form 155 will be dismissed. Improperly completed FCC Forms 155 may subject the underlying filing to dismissal under subsection (b).

(b) Filings subject to a fee under this subpart that are submitted without a fee, with an insufficient fee, with a fee payment in an improper form (see § 1.1108), or with a payment instrument that is uncollectable shall be dismissed and the application returned to the applicant or its designated agent without processing. See also § 1.1114.

* * * * *

14. Section 1.1108 is amended by revising paragraph (b); adding new paragraphs (c) and (d); and redesignating existing paragraphs (c) and (d) as (e) and (f) to read as follows:

§1.1108 Form of Payment

* * * * *

(b) Applicants are required to submit one payment instrument (check, bank draft or money order) and FCC Form 155 with each application or filing. Multiple payment instruments for a single application or filing are not permitted. Except that a separate Fee Form (FCC Form 155) will not be required once the information requirements of that form (the Fee Code, fee

amount, and total fee remitted) are incorporated into the underlying application form.

(c) The Commission may accept multiple money orders in payment of a fee for a single application where the fee exceeds the maximum amount for a money order established by the issuing agency and the use of multiple money orders is the only practical method available for fee payment.

(d) The Commission may require payment of fees with a cashier's check upon notification to an applicant or filer or prospective group of applicants under the conditions set forth below. This method of payment will be required only after an applicant has received a letter from the Commission detailing the terms and conditions of payment or the Commission has released a Public Notice requiring this method of payment for a future filing period.

(1) Payment by cashier's check may be required when

(i) a person or organization has, on two or more occasions made payment with a payment instrument on which the Commission does not receive final payment, as defined by §1.1110, and such failure is not excused by bank error or;

(ii) the numbers of expected receipts for a particular filing window or time frame justifies the use of a cashier's check to ensure final payment before the Commission expends resources in processing the submissions.

* * * * *

15. Section 1.1109 is revised to read as follows:

§1.1109 Filing Locations

(a) Except as noted herein, applications or other filings, with attached fees and FCC Form 155 must be submitted to the locations and addresses set forth in §§ 1.1102-1.1105 of the Commission's rules.

(1) Tariff filings shall be filed with the Federal Communications Commission, Washington, D.C. On the same day, the filer should submit a copy of the cover letter, the FCC Form 155, and the appropriate fee to the Mellon Bank at the address established in § 1.1105.

(2) Fee Bills will be paid at the Mellon Bank at the address for the appropriate service as established in §§ 1.1102-1.1105, as set forth on the bill.sent by the Commission. Payments must be accompanied by a copy of the bill sent by the Commission.

(3) Fees submitted with petitions for reconsideration or applications for review of fee decisions pursuant to section 1.1116(b) of this subpart will

be paid at the Fee Section, Federal Communications Commission, Washington, D.C. 20554.

(4) Applicants claiming an exemption from otherwise applicable fees under 47 U.S.C. § 158(d)(1) or 1.1112 of this subpart shall file their applications in the appropriate location as set forth in the rules for the service for which they are applying. Such applications should not be filed at the Mellon Bank.

(b) All materials must be submitted as one package. The Commission will not take responsibility for matching fees, forms and applications submitted at different times or locations. Materials submitted at other than the location and address required by section 0.401(b) and subsection (a) will be returned to the applicant or filer.

16. Section 1.1110 is amended by revising the introductory text of paragraphs (a) and (b) and adding a new paragraph (c) to read as follows:

§1.1110 Conditionality of Commission or staff authorizations

(a) Any instrument of authorization granted by the Commission, or by its staff under delegated authority, will be conditioned upon final payment of the applicable fee and timely payment of bills issued by the Commission. As applied to checks, bank drafts and money orders, final payment shall mean receipt by the Treasury of funds cleared by the financial institution on which the check, bank draft or money order is drawn.

* * * * *

(b) In those instances where the Commission has granted a request for deferred payment of a fee or issued a bill payable at a future date, further processing of the application or filing, or the grant of authority, shall be conditioned upon final payment of the fee, plus other required payments for late payments, by the date prescribed by the deferral decision or bill. Failure to comply with the terms of the deferral decision or bill shall result in the automatic dismissal of the submission or rescision of the Commission authorization for failure to meet the condition imposed by this subpart. The Commission reserves the right to return payments received after the date established on the bill and exercise the conditions attached to the application. The Commission shall:

* * * * *

(c) Where the procedures outlined in subsections (a) and (b) above would not provide a meaningful incentive to pay a fee that is due or would not be a meaningful sanction for failure to pay such a fee, in the alternative to those procedures, the Commission may, in its discretion, withhold processing and/or grant of any other application or filing made by a person or

organization who has failed to make full payment of any fee due under this subpart.

(1) Before taking such action, the staff will make a written request for the fee, together with any penalties that may be due under this subpart. Such request shall inform the applicant/filer that failure to pay will result in the Commission's withholding action on any other application or request filed by the applicant. The staff shall also inform the applicant of the procedures for seeking Commission review of the staff's fee determination.

(2) If, after final determination that the fee is due, the applicant fails to pay the fee in a timely manner, the staff may terminate the processing and/or withhold a grant of any other application or filing pending or later filed by the applicant, until the matter is resolved.

17. Section 1.1112 is amended by revising paragraph (b) and (d) to read as follows:

§1.1112 General exemptions to charges

* * * * *

(b) Applicants in the Special Emergency Radio and Public Safety Radio Services that are government entities or nonprofit entities. Applicants claiming nonprofit status must include a current Internal Revenue Service Determination Letter documenting this nonprofit status.

* * * * *

(d) Applicants, permittees, or licensees qualifying under § 1.1112(c) requesting Commission authorization in any other mass media radio service (except the international broadcast (HF) service) private radio service, or common carrier radio communications service otherwise requiring a fee, if the radio service is used in conjunction with the noncommercial educational broadcast station on a noncommercial educational basis.

* * * * *

18. Section 1.1113 is amended by revising paragraph (a) to read as follows:

§1.1113 Adjustments to charges

(a) The Schedule of Charges established by sections 1.1102 through 1.1105 of this subpart shall be adjusted by the Commission on October 1, 1993 and every two years thereafter.

(1) The fees will be adjusted by the Commission to reflect the percentage change in the Consumer Price Index for all Urban Consumers (CPI-U) from the date of enactment of the authorizing legislation (December 19, 1989) to the date of adjustment, and every two years thereafter, to reflelct the percentage change in the CPI-U in the period between the enactment date and the adjustment date.

(2) Adjustments based upon the percentage change in the CPI-U will be applied against the base fees as enacted or amended by Congress. Adjustments will not be calculated by using the previously adjusted fee as the base.

* * * * *

19. Section 1.1114 is amended by revising paragraph (a)(2) to read as follows:

§1.1114 Penalty for late or insufficient payments

(a)* * *

(2) For purposes of determining whether the filing is timely, the date of resubmission with the correct correct fee will be considered the date of filing. However, in cases where the fee payment fails due to error of the applicant's bank, as evidenced by an affidavit of an officer of the bank, the date of the original submission will be considered the date of filing.

* * * * *

20. Section 1.1115 is amended by removing paragraphs (c)(1) and (c)(2) and adding a new paragraph (d) to read as follows:

§1.1115 Waivers and deferrals

* * * * *

(d) Applicants seeking waivers must submit the request for waiver with the application or filing, required fee and FCC Form 155 . Waiver requests that do not include these materials will be dismissed in accordance with section 1.1107 of this subpart. Submitted fees will be returned if a waiver is granted. The Commission will not be responsible for delays in acting upon these requests.

21. A new section 1.1117 is added to read as follows:

§1.1117 Billing Procedures

(a) The fees required for the SMRS waiting list (§ 1.1102(g)(4) of this subpart), International Telecommunications Settlements (§ 1.1103(i) of this

subpart), Ship Inspections (§ 1.1103(k)(1-5) of this subpart), and Common Carrier Field Audits (§ 1.1105(u)(1) of this subpart) should not be paid with the filing or submission of the request. The fees required for requests for Special Temporary Authority (see generally §§ 1.1102, 1.1104, 1.1105 of this subpart) that the applicant believes is of an urgent or emergency nature and are filed directly with the appropriate Bureau or Office should not be paid with the filing of the request with that Bureau or Office.

(b) In these cases, the appropriate fee will be determined by the Commission and the filer will be billed for that fee. The bill will set forth the amount to be paid, the date on which payment is due, and the address to which the payment should be submitted. See also § 1.1110 of this subpart.

22. The authority citation for Part 5 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended: 47 U.S.C. 154, 303. Interpret or apply sec. 301, 48 Stat. 1081, as amended; 47 U.S.C. 301.

23. Section 5.53 is amended by revising paragraph (b) to read as follows:

§ 5.53 Filing of Applications

* * * * *

(b) Any application for radio station authorization and all correspondence relating thereto shall be submitted to the Commission's office at Washington, D.C. (Applications requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules.).

* * * * *

24. The authority citation for Part 61 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

25. Section 61.32 is revised to read as follows:

§ 61.32 Method of filing publications.

(a) Publications sent for filing must be addressed to "Secretary, Federal Communications Commission, Washington, D.C. 20554." The date on

which the publication is received by the Secretary of the Commission (or the Mail Room where submitted by mail) is considered the official filing date.

(b) In additional, for all tariff publications requiring fees as set forth at Part 1, Subpart G of this chapter, issuing carriers must submit the original of the transmittal letter (without attachments), FCC Form 155, and the appropriate fee to the Mellon Bank, Pittsburgh, PA., at the address set forth in § 1.1105. Issuing carriers should submit these fee materials on the same date as the submission in paragraph (a).

(c) In addition to the requirements set forth in paragraphs (a) and (b) of this section, the issuing carrier must send a copy of the transmittal letter with two copies of the proposed tariff pages and all attachments, including the supporting information specified in § 61.38, or § 61.49, as appropriate, to the Secretary, Federal Communications Commission. In addition, the issuing carrier must send a copy of the publication, supporting information specified in § 61.38 or § 61.49, as appropriate, and transmittal letter to the commercial contractor (at its office on Commission premises), and to the Chief, Tariff Review Branch. The latter should be clearly labelled as the "Public Reference Copy." The copies of supporting information required here are in addition to those required by § 61.38(c). The issuing carrier must file the copies required by this paragraph so they will be received on the same date as the filings in paragraph (a).

26. Section 61.33 is revised to read as follows:

§ 61.33 Letters of transmittal.

(a) Except as specified in Section 61.32(b), all publications filed with the Commission must be accompanied by a letter of transmittal, 8 1/2 by 11 inches in size. All letters of transmittal must (1) concisely explain the nature and purpose of the filing; (2) specify whether supporting information under Section 61.38 is required; (3) state whether copies have been delivered to the Commercial Contractor and Chief, Tariff Review Branch as required by Section 61.32, and (4) contain a statement indicating the date and method of filing of the original of the transmittal letter as required by Section 61.32(b), and the date and method of filing the copies as required by Sections 61.32(a) and (c).

(b) In addition to the requirements set forth in paragraph (a) of this section, any local exchange carrier choosing to file an Access Tariff under § 61.39 must include in the transmittal:

(1) A summary of the filing's basic rates, terms and conditions;

(2) A statement concerning whether any prior Commission facility authorization necessary to the implementation of the tariff has been obtained; and

(3) A statement that the filing is made pursuant to § 61.39.

(c) In addition to the requirements set forth in paragraph (a) of this section, any carrier filing a price cap tariff must include in the letter of transmittal a statement that the filing is made pursuant to § 61.49.

(d) In addition to the requirements set forth in paragraphs (a), (b), and (c) of this section, the letter of transmittal must specifically reference by number any special permission necessary to implement the tariff publication. Special permission must be granted prior to the filing of the tariff publication, and may not be requested in the transmittal letter.

(e) The letter of transmittal must be substantially in the following format.

(Exact name of carrier in full)

(Post Office Address)

----------, 19--

(Date)

Transmittal No. ------

Secretary,

Federal Communications Commission

Washington, D.C. 20554

Attention: Common Carrier Bureau

The accompanying tariff (or other publication) issued by ----------, and bearing FCC No. ------, effective ----------, 19--, is sent to you for filing in compliance with the requirments of the Communications Act of 1934, as amended. (Here give the additional information required.)

(Name of issuing officer or agent)

(Title)

(f) A separate letter of transmittal may accompany each publication, or the above format may be modified to provide for filing as many publications as desired with one transmittal letter.

Note: If a receipt for accompanying publication is desired, the letter of transmittal must be sent in duplicate. One copy showing the date of receipt by the Commission will then be returned to the sender.

27. Section 61.151 is revised to read as follows:

§ 61.151 Scope

Sections 61.152 and 61.153 set forth the procedures to be followed by a carrier applying for a waiver of any of the rules in this part.

28. Section 61.152 is revised to read as follows:

§ 61.152 Terms of applications and grants.

Applications for special permission must contain (a) a detailed description of the tariff publication proposed to be put into effect; (b) a statement citing the specific rules and the grounds on which waiver is sought; (c) a showing of good cause; and (d) a statement as to the date and method of filing the original of the application for special permission as required by Sections 61.153(b) and the date and method of filing the copies required by Section 61.153(a) and (c). If approved, the carrier must comply with all terms and use all authority specified in the grant. If a carrier elects to use less than the authority granted, it must apply to the Commission for modification of the original grant. If a carrier elects not to use the authority granted within sixty days of its effective date, the original grant will be automatically cancelled by the Commission.

29. Section 61.153 is revised to read as follows:

§ 61.153 Method of filing applications.

(a) An application for special permission must be addressed to "Secretary, Federal Communication Commission, Washington, D.C. 20554." The date on which the application is received by the Secretary of the Commission (or the Mail Room where submitted by mail) is considered the official filing date.

(b) In addition, for all special permission applications requiring fees as set forth at Part 1, Subpart G of this chapter, the issuing carriers must submit the original of the application letter (without attachments), FCC Form 155, and the appropriate fee to the Mellon Bank, Pittsburgh, PA. at the

address set forth in § 1.1105. The carrier should submit these fee materials on the same date as the submission in paragraph (a).

(c) In addition to the requirements set forth in paragraphs (a) and (b) of this section, the issuing carrier must send a copy of the application letter with all attachments to the Secretary, Federal Communications Commission and a separate copy with all attachments to the Chief, Tariff Review Branch. If a carrier applies for special permission to revise joint tariffs, the application must state that it is filed on behalf of all carriers participating in the affected service. Applications must be numbered consecutively in a series separate from FCC tariff numbers, bear the signature of the officer or agent of the carrier, and be in the following format:

Application No._____
(Date)_____
Secretary
Federal Communications Commission
Washington, D.C. 20554.
Attention: Common Carrier Bureau (here provide the statements required by Section 61.152).
(Exact name of carrier)_____
(Name of officer or agent)_____
(Title of officer or agent)_____

April 19, 1990

Concurring Statement
of
Commissioner Sherrie P. Marshall

In the Matter of Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of 1989

I write separately to express my concern that one aspect of the fee collection plan may unnecessarily burden many parties who deal with this agency. Specifically, I remain unpersuaded that our mandate to employ the most cost-effective cash management techniques requires that applicants submit not only application fees, but also the applications themselves, to the lockbox bank in Pittsburgh.

Our plan responds to some of the concerns of the communications bar by offering to accept and retain file copies of applications submitted to the Secretary together with evidence of timely mailing to Pittsburgh. However, I believe we could have devised a low-cost approach allowing the continued filing of applications at Commission headquarters, with fees going separately to Pittsburgh. I suspect this could be accomplished without a significantly greater expenditure of Commission resources, while sparing the public (and not merely their attorneys) the expense of filing applications in both Pittsburgh and Washington.

Yet the time left for implementation of this program has now run short, and I shall accept the judgment of the Chairman and his Managing Director on this matter of Commission administration. But if public comment or implementation should prove our double-filing plan less than optimal even within existing fiscal constraints, I, for one, would be prepared to reconsider our decision today.

# # # # #

APPENDIX A

Approved by OMB
3060-0440
Expires 12/31/90

FEDERAL COMMUNICATIONS COMMISSION

FEE PROCESSING FORM

FOR FCC USE ONLY	

Please read instructions on back of this form before completing it. Section I MUST be completed. If you are applying for concurrent actions which require you to list more than one Fee Type Code, you must also complete Section II. This form must accompany all payments. Only one Fee Processing Form may be submitted per application or filing. Please type or print legibly. All required blocks must be completed or application/filing will be returned without action.

SECTION I

APPLICANT NAME (Last, first, middle initial)

MAILING ADDRESS (Line 1) (Maximum 35 characters - refer to instruction (2) on reverse of form)

MAILING ADDRESS (Line 2) (if required) (Maximum 35 characters)

CITY

STATE OR COUNTRY (if foreign address)	ZIP CODE	CALL SIGN OR OTHER FCC IDENTIFIER (If applicable)

Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in FCC Fee Filing Guides. Enter in Column (B) the Fee Multiple, if applicable. Enter in Column (C) the result obtained from multiplying the value of the Fee Type Code in Column (A) by the number entered in Column (B), if any.

	(A) FEE TYPE CODE	(B) FEE MULTIPLE (if required)	(C) FEE DUE FOR FEE TYPE CODE IN COLUMN (A)	FOR FCC USE ONLY
(1)			$	

SECTION II — To be used only when you are requesting concurrent actions which result in a requirement to list more than one Fee Type Code.

	(A) FEE TYPE CODE	(B) FEE MULTIPLE (if required)	(C) FEE DUE FOR FEE TYPE CODE IN COLUMN (A)	FOR FCC USE ONLY
(2)			$	
(3)			$	
(4)			$	
(5)			$	

ADD ALL AMOUNTS SHOWN IN COLUMN C, LINES (1) THROUGH (5), AND ENTER THE TOTAL HERE. THIS AMOUNT SHOULD EQUAL YOUR ENCLOSED REMITTANCE. →

TOTAL AMOUNT REMITTED WITH THIS APPLICATION OR FILING	FOR FCC USE ONLY
$	

This form has been authorized for reproduction.

FCC Form 155
Mar. 1990

INSTRUCTIONS FOR COMPLETING FEE PROCESSING FORM, FCC FORM 155, May 1990

(1) "Applicant Name" - Enter the name (last, first, middle initial) of the applicant as it appears on the original application or filing being submitted with this Fee Processing Form. If company, enter name which is used commercially.

(2) "Mailing Address (Line 1)" - Enter the street address or post office box number to which the applicant wishes correspondence sent.

(3) "Mailing Address (Line 2)" - This line may be used for further identification of the address if additional space is required.

(4) "City" - Enter the name of the city associated with the given street address.

(5) "State or Country" - Enter the appropriate two-digit state abbreviation as prescribed by the U.S. Postal Service. If address is foreign, enter the appropriate country name here.

(6) "ZIP Code" - Enter the appropriate five or nine-digit ZIP code prescribed by the U.S. Postal Service.

(7) "Call Sign or Other FCC Identifier" - Enter an applicable call sign or unique FCC identifier, if any, as shown on your attached application or filing. If applying for a service affecting more than one call sign, enter one call sign only.

(8) Column (A), "Fee Type Code" - Enter correct Fee Type Code(s) from the appropriate Fee Filing Guide. Only one Fee Processing Form may be submitted per application or filing. Inaccurate or erroneous Fee Type Codes may result in your application or filing being returned to you without further processing.

(9) Column (B), "Fee Multiple" - Certain applications and filings may request action with respect to more than one station, license, frequency, or party and can be submitted together with one check if they meet specific conditions. This column is used only if a multiple, i.e., two or more, is being applied for. Examples of when this would be used are renewing more than one call sign, frequency, station, or the transfer of control of more than one station. Refer to the appropriate Fee Filing Guide for additional information.

(10) Column (C), "Fee Due For Fee Type Code in Column (A)" - Enter in this block the amount of the fee associated with the Fee Type Code shown in Column (A) (times (x) the fee multiple, if required).

(11) "Total Amount Remitted With This Application or Filing" - Enter the total of lines (1) through (5) of Column (C). This amount should equal the amount of your check or money order. We will not accept multiple checks.

HOW TO SUBMIT APPLICATIONS AND FILINGS

o Each application or filing should be assembled with the Fee Processing Form stapled to the top of the application with the check placed on top of the Fee Processing Form. DO NOT STAPLE THE CHECK TO THE APPLICATION OR FEE PROCESSING FORM. Required copies of applications should be clearly identified as "duplicate copy" and placed behind the original package. A copy of an application or filing submitted for receipt purposes only should be placed at the bottom of the submission. Extraneous material and extra copies should be avoided at all times. Failure to abide by these instructions will delay the processing of your submission.

o Completed applications or filings should be mailed to the proper address shown in the Fee Filing Guide for the particular service for which you are applying or making a filing. Applications and filings which are properly addressed to the appropriate P.O. box number may also be hand delivered to the following address. Applications received before midnight on a normal business day will receive that day's date as the receipt date. Deliveries made after midnight on Fridays will not be "officially" receipted until the next Monday. Applications received on weekends and government holidays are dated the next regular business day.

Federal Communications Commission
c/o Mellon Bank
Three Mellon Bank Center
525 William Penn Way
27th Floor, Rm. 153-2713
Pittsburgh, Pennsylvania
(Attention: Wholesale Lockbox Shift Supervisor)

o A single check, bank draft or money order made payable to the Federal Communications Commission and denominated in U.S. dollars and drawn upon a U.S. financial institution must be included with each application or filing requiring a fee. No postdated, altered or third-party checks will be accepted. Do not send cash.

o Parties hand delivering applications or filings may receive dated receipt copies by presenting copies of the applications or filings to the acceptance clerk at the time of delivery. Receipts will be provided for mail-in applications or filings if an extra copy of the application or filing is provided along with a self-addressed stamped envelope. Only one piece of paper per application or filing will be stamped for receipt purposes.

REMEMBER

o A separate completed Fee Processing Form is required with each application or filing except in certain circumstances. Please refer to the appropriate Fee Filing Guide for additional information.

o A wrong Fee Type Code or incorrect remittance may result in your application or filing being returned without processing, or result in the dismissal of your application or filing. Please ensure that FEE TYPE CODES are correct and that your check or money order equals the amount shown in the TOTAL AMOUNT REMITTED WITH THIS APPLICATION OR FILING block before submitting your application or filing.

o If you have any questions completing this form, please call the Fees Hotline, 202/632-FEES.

FCC NOTICE FOR INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

Part 1, Subpart G of the Commission's rules authorize the FCC to request the information on this form. The information requested is required in order to obtain a license or authorization from the Commission. The purpose of the information is to provide a means to link a fee payment to a specific invoice, application or filing. The information will be used by the Commission to maintain data concerning fees paid to the Commission, for internal financial control, audit, and reporting purposes. Information requested on this form will be available to the public. Your response is required to obtain a license or other authorization from the Commission.

Public reporting burden for this collection of information is estimated to average 10 minutes per response, including the time for reviewing instructions, searching data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060-0440), Washington, DC 20503.

APPENDIX B

The following provides a description of the new fees in the Schedule of Charges. These descriptions are guided by the legislative history of the 1989 Budget Act. See 135 Cong. Rec. H9610 (Statement of Congressman Dingell), S16648 (Statement of Senator Hollings), November 21, 1989. Where the 1989 Budget Act changes nothing more than the amount of a particular charge, we will not repeat the explanation of the fee set out in Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, 2 FCC Rcd 947 (1987).

PRIVATE RADIO SERVICES

MARINE COAST STATIONS

1. **Special Temporary Authority (Initial, Modifications, Extensions)**: Each STA request, or request to extend an STA, will require a fee of $100. STAs permit restoration or relocation of existing facilities, the conduct of tests to determine necessary data for an application for regular authorization, temporary non-recurring services, operation of a licensed station beyond the scope of its authorization, or are granted under other extraordinary circumstances. The request is made by letter. See 47 C.F.R. § 1.925.

2. **Assignments and Transfers of Control**: Each request for assignment or transfer of control of an authorized station will require a fee of $70 per station (assignment) or $35 per station (transfer of control). The fee applies to voluntary as well as involuntary changes in ownership. The new owner must apply for FCC consent to the assignment or transfer of control of the existing authorization in accordance with the rules under which the station is authorized. This is done on FCC Forms 503 and 1046 (assignment) and FCC Form 703 (transfer of control). See 47 C.F.R. §§ 1.924 (assignment), 1.924(b)(2)(vi) (transfer of control).

3. **Request for Waiver**: A routine request for waiver is one that involves no more than one station and one rule section, and it includes requests submitted as part of an application. Routine requests require a fee of $105. Non-routine requests involve more than one station or more than one rule section. The fee is determined by multiplying the number of stations by the number of rule sections and then multiplying this figure by $105. Waivers are requested by letter. See 47 C.F.R. § 1.931.

SHIP STATIONS

4. **New License**: Each request for a new station license, including requests for licenses to operate a portable ship station, require a fee of $35 per station. Requests for a fleet license will be charged according to the number

of stations requested. The request is made on FCC Form 506. See 47 C.F.R. §§80.13, 80.53, 80.55.

5. **Modification of License**: Each request for a modification of an existing license submitted on FCC Form 506 will require a fee of $35 per application. No fee will be required for changes in mailing address, name of the licensee, name of the vessel, or addition or replacement of transmitting equipment on a frequency or frequency band authorized by the present license, when done on FCC Form 405-A or letter. See 47 C.F.R. §80.29. A fleet license will be charged based upon the number of stations modified.

6. **Renewal of License**: Each request for the renewal of an existing license will require a fee of $35 per application. The request is submitted on FCC Forms 405-B or 506. See 47 C.F.R. § 80.25. A fleet license will be charged based upon the number of stations renewed.

7. **Request for Waiver**: A routine request for waiver is one that involves no more than one station and one rule section, and it includes requests submitted as part of an application. Routine requests require a fee of $105. Non-routine requests involve more than one station or more than one rule section. The fee is determined by multiplying the number of stations by the number of rule sections and then multiplying this figure by $105. Waivers are requested by letter. See 47 C.F.R. §§ 1.931, 80.59(c). In this service, a waiver includes a request for exemption, a modification of an existing exemption or renewal of an exemption from the provisions of law and treaty otherwise requiring the compulsory use of a ship station.

OPERATIONAL FIXED MICROWAVE STATIONS

8. **Special Temporary Authority (Initial, Modifications, Extensions)**: Each STA request, or request to extend an STA, requires a fee of $35. STAs permit restoration or relocation of existing facilities, the conduct of tests to determine necessary data for an application for regular authorization, temporary non-recurring services, the operation of a licensed station beyond the scope of its authorization, or is granted under other extraordinary circumstances. The request is made by letter. 47 C.F.R. § 94.43.

9. **Assignments and Transfers of Control**: Each request for assignment or transfer of control of an authorized station will require a fee of $155 per station (assignment) or $35 per station (transfer of control). The fee applies to voluntary as well as involuntary changes in ownership. The new owner must apply for FCC consent to the assignment or transfer of control of the existing authorization in accordance with the rules under which the station is authorized. This is done on FCC Forms 402 and 1046 (assignment) and FCC Form 703 (transfer of control). See 47 C.F.R. §§ 90.153.

10. **Request for Waiver**: A routine request for waiver is one that involves no more than one station and one rule section, and it includes requests submitted as part of an application. Routine requests require a fee of $105. Non-

routine requests involve more than one station or more than one rule section. The fee is determined by multiplying the number of stations by the number of rule sections and then multiplying this figure by $105. Waiver are requested by letter. See 47 C.F.R. §§ 1.931.

AVIATION (GROUND STATIONS)

11. **Special Temporary Authority (Initial, Modifications, Extensions)**: Each STA request, or request to extend an STA, requires a fee of $100. STAs permit restoration or relocation of existing facilities, the conduct of tests to determine necessary data for an application for regular authorization, temporary non-recurring services, the operation of a station beyond the scope of its authorization, or is granted under other extraordinary circumstances. The request is made by letter. 47 C.F.R. § 94.43.

12. **Assignments and Transfers of Control**: Each request for assignment or transfer of control of an authorized station will require a fee of $155 per station (assignment) or $35 per station (transfer of control). The fee applies to voluntary as well as involuntary changes in ownership. The new owner must apply for FCC consent to the assignment or transfer of control of the existing authorization in accordance with the rules under which the station is authorized. This is done on FCC Forms 402 and 1046 (assignment) and FCC Form 703 (transfer of control). See 47 C.F.R. §§ 90.153.

13. **Request for Waiver**: A routine request for waiver is one that involves no more than one station and one rule section, and it includes requests submitted as part of an application. Routine requests require a fee of $105. Non-routine requests involve more than one station or more than one rule section. The fee is determined by multiplying the number of stations by the number of rule sections and then multiplying this figure by $105. Waivers are requested by letter. See 47 C.F.R. §§ 1.931.

AIRCRAFT STATIONS

14. **New Authorizations**: Each request for a new license to operate an aircraft station or portable station will require a fee of $35 per application. Requests for fleet licenses will be charged according to the number of stations requested. These requests are made on FCC Form 404. See 47 C.F.R. §§ 87.25, 87.25(c), 87.47.

15. **Modifications**: Each request for a modification to an existing license will require a fee of $35 per application. This fee will only be required if the modification is submitted on FCC Form 404. No fee will be required when the Commission is informed of a change in licensee name or address, or that the transmitting equipment has been replaced on a frequency or frequency band authorized by the present license. See 47 C.F.R. §87.31. A fleet license will be charged based upon the number of stations modified.

16. **Renewal of License**: Each request for a renewal of an existing station license will require a fee of $35 per application. These requests are made on FCC Forms 404 or 405-B. See 47 C.F.R. § 87.27. A fleet license will be charged based upon the number of stations renewed.

17. **Request for Waiver**: A routine request for waiver is one that involves no more than one station and one rule section, and it includes requests submitted as part of an application. Routine requests require a fee of $105. Non-routine requests involve more than one station or more than one rule section. The fee is determined by multiplying the number of stations by the number of rule sections and then multiplying this figure by $105. Waivers are requested by letter. See 47 C.F.R. §§ 1.931.

LAND MOBILE RADIO STATIONS (INCLUDING FOR-PROFIT SPECIAL EMERGENCY AND PUBLIC SAFETY STATIONS)

18. **Special Temporary Authority (Initial, Modifications, Extensions)**: Each STA request, or request to extend an STA, requires a fee of $35. STAs permit restoration or relocation of existing facilities, the conduct of tests to determine necessary data for an application for regular authorization, temporary non-recurring services, the operation of a station beyond the scope of its authorization, or are granted under other extraordinary circumstances. The request is made by letter. 47 C.F.R. § 94.43.

19. **Assignments and Transfers of Control**: Each request for assignment or transfer of control of an authorized station will require a fee of $35 per station. The fee applies to voluntary as well as involuntary changes in ownership. The new owner must apply for FCC consent to the assignment or transfer of control of the existing authorization in accordance with the rules under which the station is authorized. This is done on FCC Forms 574 and 1046 (assignment) and FCC Form 703 (transfer of control). See 47 C.F.R. § 90.153.

20. **Request for Waiver**: A routine request for waiver is one that involves no more than one station and one rule section, and it includes requests submitted as part of an application. Routine requests require a fee of $105. Non-routine requests involve more than one station or more than one rule section. The fee is determined by multiplying the number of stations by the number of rule sections and then multiplying this figure by $105. Waivers are requested by letter. See 47 C.F.R. §§ 1.931.

21. **Reinstatement**: Each request to reinstate a license that has previously expired (within six months of the expiration) will require a fee of $35 per call sign. See 47 C.F.R. § 90.175.

SPECIALIZED MOBILE RADIO SYSTEMS - BASE STATIONS

22. **New License**: Each request for a new license to operate a base station in a conventional or trunked mode consisting of not more than six specific

fixed station locations will require a fee of $35 per call sign. The request is made on FCC Form 574. See 47 C.F.R. § 90.607.

23. **Modification**: Each request for a modification of an existing license will require a fee of $35 per call sign. If an application contains more than six specific fixed station locations, a fee will be assessed for each multiple of six locations, or part thereof. This fee will only be required if the modification is submitted on FCC Form 574. See 47 C.F.R. § 90.135(a)(1)-(8). No fee will be required for changes in mailing address, name of the licensee, change in the number or location of station control points, change in the number or location of control stations meeting the requirements of section 90.119(a)(2)(ii), a change in the number of mobile units operated by radiolocation service licensees, or a notice that the station no longer is in service. These notifications are made on FCC Form 405-A or by letter.

24. **Renewal of License**: Each request for the renewal of an existing license will require a fee of $35 per call sign. The request is made on FCC Forms 574R or 405-A. See 47 C.F.R. § 90.149.

25. **Waiting List**: If, due to the lack of channels in a particular area, an applicant for a new license cannot get frequencies or an existing licensee cannot obtain additional frequencies, the applicant will automatically be placed on a waiting list for that area. The waiting list charge is $35 per application per year. All waiting list applicants will be billed $35 per application on December 31 of each year.

26. **Special Temporary Authority (Initial, Modifications, Extensions)**: Each STA request, or request to extend an STA, requires a fee of $35. STAs permit restoration or relocation of existing facilities, the conduct of tests to determine necessary data for an application for regular authorization, temporary non-recurring services, the operation of a station beyond the scope of its authorization, or are granted under other extraordinary circumstances. The request is made by letter. 47 C.F.R. § 90.145.

27. **Assignments and Transfers of Control**: Each request for assignment or transfer of control of an authorized station will require a fee of $35 per call sign. The fee applies to voluntary as well as involuntary changes in ownership. The new owner must apply for FCC consent to the assignment or transfer of control of the existing authorization in accordance with the rules under which the station is authorized. This is done on FCC Forms 574 and 1046 (assignment) and FCC Form 703 (transfer of control). See 47 C.F.R. §§ 90.153.

28. **Request for Waiver**: A routine request for waiver is one that involves no more than one call sign and one rule section, and it includes requests submitted as part of an application. Routine requests require a fee of $105. Non-routine requests involve more than one call sign or more than one rule section. The fee is determined by multiplying the number of call signs by the

number of rule sections and then multiplying this figure by $105. Waivers are requested by letter. See 47 C.F.R. §§ 1.931.

29. **Reinstatement**: Each request to reinstate a license that has previously expired (within six months of the expiration) will require a fee of $35 per call sign. 47 C.F.R. § 90.175.

PRIVATE CARRIER LICENSES

30. **New License**: Each request for a new license to operate a Private Carrier base station, consisting of not more than six specific fixed station locations, will require a fee of $35 per call sign. The request is made on FCC Form 574. See 47 C.F.R. § 90.179.

31. **Modification**: Each request for a modification of an existing license will require a fee of $35 per call sign. If an application contains more than six specific fixed station locations, a fee will be assessed for each multiple of six locations, or part thereof. This fee will only be required if the modification is submitted on FCC Form 574. See 47 C.F.R. § 90.135(a)(1)-(8). No fee will be required for changes in mailing address, name of the licensee, change in the number or location of station control points, change in the number or location of control stations meeting the requirements of section 90.119(a)(2)(ii), a change in the number of mobile units operated by radiolocation service licensees, or a notice that the station no longer is in service. These notifications are made on FCC Form 405-A or by letter.

32. **Renewal of License**: Each request for the renewal of an existing license will require a fee of $35 per call sign. The request is made on FCC Forms 574R or 405-A. See 47 C.F.R. § 90.149.

33. **Special Temporary Authority (Initial, Modifications, Extensions)**: Each STA request, or request to extend an STA, requires a fee of $35. STAs permit restoration or relocation of existing facilities, the conduct of tests to determine necessary data for an application for regular authorization, temporary non-recurring services, the operation of a station beyond the scope of its authorization, or is granted under other extraordinary circumstances. The request is made by letter. See 47 C.F.R. § 90.145.

34. **Assignments and Transfers of Control**: Each request for assignment or transfer of control of an authorized station will require a fee of $35 per call sign. The fee applies to voluntary as well as involuntary changes in ownership. The new owner must apply for FCC consent to the assignment or transfer of control of the existing authorization in accordance with the rules under which the station is authorized. This is done on FCC Forms 574 and 1046 (assignment) and FCC Form 703 (transfer of control). See 47 C.F.R. §§ 90.153.

35. **Request for Waiver**: A routine request for waiver is one that involves no more than one station and one rule section, and it includes requests submitted as part of an application. Routine requests require a fee of $105. Non-routine requests involve more than one station or more than one rule section. The fee is determined by multiplying the number of stations by the number of rule sections and then multiplying this figure by $105. Waivers are requested by letter. See 47 C.F.R. §§ 1.931.

36. **Reinstatement**: Each request to reinstate a license that has previously expired (within six months of the expiration) will require a fee of $35 per call sign.

GENERAL MOBILE RADIO SERVICE (GMRS)

37. **New License**: Each request for a new license to operate a GMRS system or a station in a GMRS system will require a fee of $35 per call sign. A single fee is required for up to six land stations in a GMRS system, which constitutes one call sign. The request is made on FCC Form 574. See 47 C.F.R. § 90.607.

38. **Modification**: Each request for a modification of an existing license will require a fee of $35 per call sign. If an application contains more than six specific fixed station locations, a fee will be assessed for each multiple of six locations, or part thereof. This fee will only be required if the modification is submitted on FCC Form 574. See 47 C.F.R. § 90.135(a)(1)-(8). No fee will be required for changes in mailing address, name of the licensee, change in the number or location of station control points, change in the number or location of control stations meeting the requirements of section 90.119(a)(2)(ii), a change in the number of mobile units operated by radiolocation service licensees, or a notice that the station no longer is in service. These notifications are made on FCC Form 405-A or by letter.

39. **Renewal of License**: Each renewal request will require a fee of $35 per call sign. The request is made on FCC Forms 574R and 405-A. See 47 C.F.R. § 90.149.

40. **Request for Waiver**: A routine request for waiver is one that involves no more than one station and one rule section, and it includes requests submitted as part of an application. Routine requests require a fee of $105. Non-routine requests involve more than one station or more than one rule section. The fee is determined by multiplying the number of stations by the number of rule sections and then multiplying this figure by $105. Waivers are requested by letter. See 47 C.F.R. §§ 1.931.

41. **Special Temporary Authority (Initial, Modifications, Extensions)**: Each STA request, or request to extend an STA, requires a fee of $35. STAs permit restoration or relocation of existing facilities, the conduct of tests to determine necessary data for an application for regular authorization,

temporary non-recurring services, the operation of a station beyond the scope of its authorization, or are granted under other extraordinary circumstances. The request is made by letter. See 47 C.F.R. § 90.145.

42. **Transfers of Control**: Each request for transfer of control of an authorized station will require a fee of $35 per call sign. The fee applies to voluntary as well as involuntary changes in ownership. The new owner must apply for FCC consent to the assignment or transfer of control of the existing authorization in accordance with the rules under which the station is authorized. This is done on FCC Form 703. See 47 C.F.R. §§ 90.153.

RESTRICTED RADIOTELEPHONE OPERATOR PERMIT

43. Each request for this license will require a fee of $35. This permit allows the operation of most aircraft and aeronautical ground stations, and marine radiotelephone stations on pleasure vessels when operator licensing is required. This license is also required for transmitter operation, repair and maintenance of all types of AM, FM, TV and international broadcast stations.

REQUEST FOR DUPLICATE STATION LICENSE

44. Each request by an existing licensee to replace an original license that has been lost, mutilated or destroyed will require a fee of $35.

HEARING (COMPARATIVE NEW AND MODIFICATIONS)

45. To participate in a comparative hearing among mutually exclusive private radio applications, an applicant must pay a fee of $6,760, unless the requirements of Section 1.1108 are met. The fee is due upon the filing of a Notice of Appearance with the Commission.

EQUIPMENTAL APPROVAL SERVICES/EXPERIMENTAL RADIO

CERTIFICATION

46. **Modifications and Class II Permissive Changes**: Each request for a modification or a class II permissive changes will require a fee of $35. The request is made on FCC Form 731.

47. **Request for Confidentiality**: Each request for confidentiality included with any application for certification or a modification thereto will require a fee of $105, in addition to any fee for the underlying equipment authorization request. The request is made by letter attached to or accompanying the application form.

TYPE ACCEPTANCE

48. **Modifications and Class II Permissive Changes**: Each request for a modification or a class II permissive changes will require a fee of $35. The request is made on FCC Form 731.

49. **Request for Confidentiality**: Each request for confidentiality included with any application for type acceptance or a modification thereto will require a fee of $105, in addition to any fee for the underlying equipment authorization request. The request is made by letter attached to or accompanying the application form.

TYPE APPROVAL

50. **Request for Confidentiality**: Each request for confidentiality included with any application for type approval or a modification thereto will require a fee of $105, in addition to any fee for the underlying equipment authorization request. The request is made by letter attached to or accompanying the application form.

ADVANCE APPROVAL FOR SUBSCRIPTION TV SYSTEMS

51. Licensees and permittees of TV broadcast and low power TV stations may conduct subscription operations only by using an encoding system approved in advance by the Commission. Each request will require a fee of $2,250 and is made on FCC Form 731.

52. **Request for Confidentiality**: Each request for confidentiality included with any application for advance approval of subsription TV systems will require a fee of $105, in addition to any fee for the underlying equipment authorization request. The request is made by letter attached to or accompanying the application form.

ASSIGNMENT OF GRANTEE CODE FOR EQUIPMENT IDENTIFICATION

53. Each request for assignment of grantee code for equipment identification will require a fee of $35, in addition to any fee for the equipment authorization request. The request is made by letter and need only be filed once.

EXPERIMENTAL RADIO SERVICE

54. **New Construction Permit and Station Authorization**: Each request for a combined construction permit and radio station license for base stations, fixed stations or mobile stations will require a fee of $35 per application. The request is made on FCC Form 442.

55. **Modification to Existing Construction Permit and Station Authorization**: Each request to modify a combined construction permit and station license will require a fee of $35 per application. The request is made on FCC Form 442.

56. **Renewal of Station Authorization**: Each request for the renewal of an existing station authorization in accordance with the terms of the existing authorization will require a fee of $35 per application. The request is made on FCC Form 405.

57. **Assignment or Transfer of Control**: Each request for a voluntary or involuntary assignment of the legal right to construct or control the use or operation of a station or voluntary or involuntary transfer of a corporation holding a station authorization will require a fee of $35. The request is made on FCC Form 702 or 703.

58. **Special Temporary Authority**: Each STA request, or request to extend and STA, will require a fee of $35 per application. The request is made by letter.

59. **Additional Charge for Applications Containing Requests to Withhold Information from Public Inspection**: Each such request included with any application for experimental radio authorizations will require an additional fee of $35 per application. The request is made by letter accomopanying the application.

MASS MEDIA SERVICES

COMMERCIAL TV STATIONS

60. **Call Sign (New or Modification)**: Each request for a new call sign or the modification of an existing call sign will require a fee of $55 per application. However, no fee required to modify an existing call sign by only adding or deleting the -FM or -TV suffix. See 47 C.F.R. § 73.3550. The call sign fee is in addition to any fee that may be due for any concurrently filed application. The call sign request is done by letter.

61. **Special Temporary Authority**: Each request for an STA, or an extension of an existing STA, other than authority to remain silent, will require a fee of $100 per application. The STA fee also applies to applicants requesting special field test authority. STAs are requested by letter.

62. **Extension of Time to Construct or to Replace an Expired Construction Permit**: Each request of extension of time to construct a TV station or to replace an expired construction permit for such a station will require a fee of $200 per application. This request is done on FCC Form 307. See 47 C.F.R. § 73.3534.

63. **Permit to Deliver Programs to Foreign Broadcasting Stations**: Each such request will require a fee of $55 per application. This formal or informal application is mandated under Section 325(b) of the Communications Act. This request is generally made on FCC Form 308, but, if the applicant holds a valid broadcast station permit or license, a letter request may be used in lieu of

Form 308. See 47 C.F.R. § 73.3534. The fee is also required with letter requests.

64. **Petition for Rulemaking for New Community of License**: Each petition for rulemaking filed by an existing TV licensee or permittee to amend the TV Table of Allotments to re-allot the requestor's channel from one community to another is subject to $1,565 fee, payable after approval of the petition, when the licensee or permittee files the appropriate application to reflect the change (on FCC Form 301 or 302, as directed by the Mass Media Bureau). The fee is in addition to the fee required for the Form 301 or 302 application.

65. **Ownership Report**: A fee of $35 per report is due when the licensee files its annual ownership report (FCC Form 323) as required by 47 C.F.R. §73.3615. The same fee is due if the licensee files a letter in lieu of the Form 323, reporting that there has been no change since the last filing of FCC Form 323.

COMMERCIAL RADIO STATIONS

66. **Call Sign (New or Modification)**: Each request for a new call sign or the modification of an existing call sign will require a fee of $55 per application. However, no fee is charged where the requestor seeks only to modify an existing call sign by adding or deleting the -FM or -TV suffix. The call sign fee is in addition to any other fee due for any other concurrently filed application. The call sign request is made by letter.

67. **Special Temporary Authority**: Each STA request, or request to extend an STA, other than authority to remain silent, will require a fee of $100 per application. The STA fee applies to applicants requesting special field test authority. STAs are requested by letter.

68. **Extension of Time to Construct or to Replace an Expired Construction Permit**: Each request of extension of time to construct an AM or FM station or to replace an expired construction permit for such a station will require a fee of $200 per application. This request is done on FCC Form 307.

69. **Permit to Deliver Programs to Foreign Broadcasting Stations**: Each request for permission to deliver programs to foreign broadcasting stations will require a fee of $55 per application. This request is generally made on FCC Form 308, but, if the applicant holds a valid broadcast station permit or license, an informal letter request may used in lieu of Form 308. This fee is also required with letter submissions.

70. **Petition for Rulemaking for New Community of License or Higher Class of Channel**: Each petition for rulemaking for a new community of license or a higher class channel filed by an existing FM permittee or licensee will require a fee of $1,565, payable upon approval of a petition, when the licensee or permittee files an application to reflect the change (on FCC Form

301 or 302, as directed by the Mass Media Bureau). The fee is in addition to the fee for the Form 301 or 302 application.

71. **Ownership Report**: A fee of $35 per report is due when the licensee files its annual ownership report (FCC Form 323) as required by 47 C.F.R. §73.3615. The same fee is due if the licensee files a letter in lieu of the Form 323, reporting that there has been no change since the last filing of FCC Form 323.

72. **AM Remote Control**: Each request for an AM remote control authorization will require a fee of $35 per application. The request is made on FCC Form 301-A. It can also be made on FCC Form 301 when applying for remote control authorization in connection with an application for a CP for a new AM directional antenna or to make modifications to an existing AM subject to the sampling requirements of 47 C.F.R. § 73.68. When remote control authorization is requested on FCC Form 301, the $35 fee is in addition to the fee required for the CP application.

73. **FM Directional Antenna**: Each request for a license for a new FM directional antenna system or for changes to an existing FM directional antenna system will require a fee of $355. The request is made on FCC Form 302. A directional antenna is one that is designed or altered for the purpose of obtaining a noncircular radiation pattern. The fee is required in addition to the fee for the FM license application.

FM TRANSLATORS

74. **Special Temporary Authority**: Each STA request, or request to extend an STA, other than authority to remain silent, will require a fee of $100 per application. The STA fee also applies to applicants requesting special field test authority. STAs are requested by letter.

TV TRANSLATORS AND LPTV STATIONS

75. **Special Temporary Authority**: Each STA request, or request to extend an existing STA, other than authority to remain silent, will require a fee of $100 per application. The STA fee also applies to applicants requesting special field test authority. STAs are requested by letter.

AUXILIARY SERVICES

76. **Special Temporary Authority**: Each STA request, or request to extend an STA, other than authority to remain silent, will require a fee of $100 per request. The request for a special temporary authority is done by letter.

FM BOOSTERS

77. **New or Major Change Construction Permits**: Each request for a new or major change construction permit will require a fee of $425 per application. This request is made on FCC Form 349.

78. **License**: Each request for a license to cover a construction permit will require a fee of $85 per application. This request is made on FCC Form 350.

79. **Special Temporary Authority**: Each STA request, or request to extend an STA, other than authority to remain silent, will require a fee of $100 per application. The STA fee also applies to applicants requesting special field test authority. STAs are requested by letter.

TV BOOSTERS

80. **New or Major Change Construction Permits**: Each request for a new or major change construction permit will require a fee of $425 per application. This request is made on FCC Form 346.

81. **License**: Each request for a license to cover a construction permit will require a fee of $85 per application. This request is made on FCC Form 347.

82. **Special Temporary Authority**: Each STA request, or request to extend an STA, other than authority to remain silent, will require a fee of $100 per application. The STA fee also applies to applicants requesting special field test authority. STAs are requested by letter.

INTERNATIONAL BROADCAST STATION

Note: Although many international broadcasters are noncommercial, Congress did not specifically exempt such licensees from these fees, and the rationale in the Fee Reconsideration Order for exempting noncommercial educational LPTV and translators would not apply to these stations. 3 FCC Rcd at 5988. Thus, we do not believe that Congress intended the Commission to exempt noncommercial educational international broadcasters from these fees.

83. **New Construction Permit and Facilities Change CP**: Each request for permission to construct a new international station or to make changes to an existing station will require a fee of $1,705 per application. The request is made on FCC Form 309.

84. **License**: Each request for a license to cover a construction permit will require a fee of $385 per application. License fees are not applicable to any license modification that may be made without prior authorization from the FCC. The request is made on FCC Form 310.

85. **Assignment or Transfer of Control**: Each request for assignment or transfer of control will require a fee of $60 per station. The request is made on FCC Form 314, 315, or 316.

86. **Renewal**: Each request for the renewal of an existing license will require a fee of $95. The request is done on the FCC Form 311.

87. **Frequency Assignment and Coordination**: Frequencies are assigned based on frequency-hour requests submitted by applicants. A frequency-hour is a specific hour (or fraction thereof) of the day during which a station may broadcast on a specific frequency during a particular season. There are four seasons of varying lengths during the year. Applicants make tentative and final frequency hour requests for each season, and these requests are coordinated with foreign governments in order to avoid mutual interference. The fee of $35 will be charged for each final frequency-hour requested for each season. The total fee will be determined by adding all of the frequency-hours requested for one season, rounding that total off to the next higher whole number of hours, and then multiplying the number of whole frequency-hours by $35. The following is an example of this calculation for a hypothetical station requesting frequency-hours for a particular season.

Frequency (kHz)	Time (UTC)	Number of Hours
6185	0230-1200	9.5
9715	1200-1400	2
11965	1400-1630	2.5
15420	1630-2115	4.75
15440	2115-2145	0.5
	Total Frequency-Hours	19.25

The 19.25 is rounded up to 20 frequency-hours and multiplied by the $35 fee, resulting in a total fee of $700 for the season. If the request is for a six month period (two seasons), the total fee would be twice that amount ($1400). Moreover, an additional $35 per frequency-hour will be charged for additional or changed frequency-hour requests submitted by applicants after the final request has been submitted or after the season has started. However, if such additions or changes are requested by the Commission, no fee will be charged for them.

88. **Special Temporary Authority**: Each STA request, or request for to extend an STA, other than authority to remain silent, will require a fee of $100 per application. The STA fee also applies to applicants requesting special field test authority. STAs are requested by letter.

CABLE TELEVISION SERVICE

89. **Special Temporary Authority (CARS)**: Each STA request, or request to extend an STA, other than authority to remain silent, will require a fee of $100 per application. The request is generally made by letter.

90. **Section 76.12 Registration Statement**: Each § 76.12 registration statement will require a fee of $35 per statement.

91. **Aeronautical Frequency Usage Notifications**: Each such notification will require a fee of $35 per notice. See 47 C.F.R. §76.615.

92. **Aeronautical Frequency Usage Waivers**: Each request will require a fee of $35 per waiver. Such requests seek a waiver of the distance and/or frequency separation requirements in 47 C.F.R. § 76.619. The request is made by letter.

DIRECT BROADCAST SATELLITE

93. **Special Temporary Authority**: Each STA request, or request to extend an STA, other than authority to remain silent, will require a fee of $100 per application. In addition, the STA fee will apply to applicants requesting test authority. STAs are requested by letter.

COMMON CARRIER SERVICES

FEES APPLICABLE TO ALL COMMON CARRIER SERVICES

94. **Hearings**: A fee of $6,760 is required for each applicant designated for hearing in a case involving comparative review of applicants for a new service, major or minor modifications of existing common carrier services, or renewal of an existing common carrier authorization. The hearing fee must accompany the Notice of Appearance unless payment is exempted in accordance with 47 C.F.R. § 1.1111(c).

95. **Developmental Authority**: Each such request will require the same fee as for regular authority in the radio service in which developmental authority is requested, unless otherwise indicated. The fee is in addition to any later request for regular authority. These requests are made by letter.

96. **Formal Complaints and Pole Attachment Complaints Filing Fee**: Each formal complaint and each pole attachment complaint will require a fee of $120. The complaint must conform to specific requirements of 47 C.F.R. §§ 1.720-23, 1.733-34 (formal complaints); 47 C.F.R. §§1.1404 and 1.1408 (pole attachment complaints). Informal complaints filed against communications common carriers pursuant to 47 C.F.R. §1.716 do not require filing fees. Except in unusual circumstances, formal complaints against multiple common carriers and pole attachment complaints against multiple carriers, cable television systems, or utilities would be considered to be separate complaints (even if jointly captioned) for which separate fees are required.

DOMESTIC PUBLIC LAND MOBILE STATIONS (includes Base, Dispatch, Control and Repeater Stations)

97. **Fill In Transmitter**: Each request for a fill in transmitter will require a fee of $230 per transmitter. The request is done on FCC Form 401 or 489.

98. **Major Amendment to a Pending Application**: A major amendment to a pending application will require a fee of $230 per transmitter. The request is made on FCC Form 401. Major amendments include changes in technical proposals,

amendments to proposed base station facilities, amendments that increase a CGSA or changes in ownership and control.

99. **Assignment or Transfer of Control**: Each request for an assignment or transfer of control of a common carrier authorization will require a fee of $230 for the first call sign on the application and an additional $35 for each additional call sign. The request is made on FCC Form 490.

100. **Partial Assignment**: Each request for a partial assignment of a common carrier authorization will require a fee of $230 per call sign. A partial assignment occurs when only a portion of the authorized facility is assigned or transferred to another party, whether voluntarily or involuntarily. The request is made on FCC Forms 401 and 490.

101. **Minor Modification**: A minor modifications to existing stations will require a fee of $35 per transmitter. Minor modifications are requested on FCC Form 489.

102. **Special Temporary Authority**: Each STA request, or request to extend an STA, will require a fee of $200 per frequency/ per location.

103. **Extension of Time to Construct**: Each request for an extension of time to construct will require a fee of $35 per application. These requests are made on FCC Form 489.

104. **Notice of Completion of Construction**: Each notice of completion of construction will require a fee of $35 per application. The notification is made on FCC Form 489.

105. **Auxiliary Test Station**: Each request for an auxiliary test station will require a fee of $200 per transmitter. The request is made on FCC Form 401.

106. **Subsidiary Communications Service**: Each request for a subsidiary communications service will require a fee of $100 per request. Subsidiary communications service is a one-way service using a broadcast station sub-carrier frequency. The request is made on FCC Form 401.

107. **Reinstatement**: A request for a new authorization after the expiration of a construction authorization or license to operate will require a fee of $35 per application. The request is made on FCC Form 489.

108. **Combining Call Signs**: Each request to consolidate the facilities of one or more call signs under a single call sign will require a fee of $200 per call sign. The request is made on FCC Form 489.

109. **Standby Transmitter**: Each request for a license to operate a standby transmitter will require a fee of $200 per transmitter/per location. The request is made on FCC Form 401.

110. **900 MHz Nationwide Paging-Renewal**: Each request for renewal of a license for 900 MHz nationwide paging will require a fee of $35 for network organizers and a $35 fee per operator/per city for a network operator. The request is made on FCC Form 405. The network organizer and network operator are subject to these renewal fees in addition to any other fee imposed on domestic public land mobile licensees or permittees.

CELLULAR SYSTEMS

111. **Extension of Time to Complete Construction**: Each request for the extension of time to complete construction will require a fee of $35. The request is made on FCC Form 489.

112. **Special Temporary Authority**: Each STA request will require a fee of $200 per system. The request is made by letter.

113. **Combining Cellular Geographic Service Areas**: Each request by licensees of two different geographic areas to combine their service areas under one call sign for administrative efficiency will require a fee of $50 per area. The request is made by letter.

RURAL RADIO (includes Central Office, Interoffice, or Relay Facilities)

114. **Major Modifications**: Each request for major modification to a rural radio service facility will require a fee of $105 per transmitter. The request is made on FCC Form 401.

115. **Major Amendment to a Pending Application**: A major amendment to a pending application will require a fee of $105 per transmitter.

116. **Assignment or Transfer of Control**: Each request for an assignment of a rural radio authorization or a transfer of control will require a fee of $105 for the first call sign on the application and an additional $35 for each additional call sign. The request is made on FCC Form 490. Each request for a partial assignment of a rural radio authorization will require a fee of $105 per call sign. A partial assignment occurs when only a portion of the authorized facility is assigned or transferred to another party, whether voluntarily or involuntarily. The request is made on FCC Forms 401 and 490.

117. **Extension of Time to Complete Construction**: Each request for an extension of time to complete construction will require a fee of $35 per application. The request is made on FCC Form 489.

118. **Notice of Completion of Construction**: Each notice of completion of construction will require a fee of $35 per application. The notice of completion of construction certifies that the facilities have been constructed as authorized or with minor modifications. The notification is made on FCC Form 489.

119. **Special Temporary Authority**: Each STA request, or request to extend an STA, will require a fee of $200 per frequency/per location. The request is done by letter.

120. **Reinstatement**: A request for new authorization after the expiration of an authorization will require a fee of $35 per application. The request is made on FCC Form 489.

121. **Combining Call Signs**: Each request to consolidate the facilities of one or more call signs under a single call sign will require a fee of $200 per call sign. The request is made on FCC Form 489.

122. **Auxiliary Test Station**: Each request for an auxiliary test station will require a fee of $200 per transmitter. The request is made on FCC Form 401.

123. **Standby Transmitter**: Each request for a license to operate a standby transmitter will require a fee of $200 per transmitter/ per location. The request is made on FCC Form 401.

OFFSHORE RADIO SERVICE

124. **Major Modifications**: Each request for a major modification will require a fee of $105 per transmitter. The request is made on FCC Form 401.

125. **Fill In Transmitter**: Each request for a fill in transmitter will require a fee of $105 per transmitter. The request is made on FCC Form 401 or 489.

126. **Major Amendment to a Pending Application**: A major amendment to a pending application will require a fee of $105 per transmitter. The request is made on FCC Form 401.

127. **Minor Modification**: Each request for a minor modification of an existing license will require a fee of $35 per transmitter. The request is made on FCC Form 401.

128. **Assignment or Transfer of Control**: Each request for an assignment of an offshore radio service authorization or a transfer of control will require a fee of $105 for the first call sign on the application and additional $35 for each additional call sign. The request is made on FCC Form 490. Each request for a partial assignment of a rural radio service authorization will require a fee of $105 per call sign. A partial assignment occurs when only a portion of the authorized facility is assigned or transferred to another party, whether voluntarily or involuntarily. The request is made on FCC Forms 401 and 490.

129. **Extension of Time to Complete Construction**: Each request for an extension of time to complete construction will require a fee of $35 per application. The request is made on FCC Form 489.

130. **Reinstatement**: A request for a new authorization after the expiration of an authorization will require a fee of $35 per application. The request is made on FCC Form 489.

131. **Notice of Completion of Construction**: Each notice of completion of construction will require a fee of $35 per application. The notification is made on FCC Form 489.

132. **Special Temporary Authority**: Each STA request, or request to extend an STA, will require a fee of $200 per frequency/ per location. STAs are requested by letter.

133. **Combining Call Signs**: Each request to consolidate the facilities of one or more call signs under a single call sign will require a fee of $200 per call sign. The request is made on FCC Form 489.

134. **Auxiliary Test Station**: Each request for an auxiliary test station will require a fee of $200 per transmitter. The request is made on FCC Form 401.

135. **Standby Transmitter**: Each request for a license to operate a standby transmitter will require a fee of $200 per transmitter/per location. The request is made on FCC Form 401.

POINT-TO-POINT MICROWAVE AND LOCAL TELEVISION RADIO SERVICE

136. **Conditional License**: Each request for a conditional license (formerly called a construction permit) will require a fee of $155 per station. The request is made on FCC Form 494.

137. **Major Modification of Conditional License or License Authorization**: Each request for a major modification of a conditional license or license authorization will require a fee of $155 per station. The request is made on FCC Form 494.

138. **Certification of Completion of Construction**: Each certification of completion of construction filed to notify the Commission that construction of a specified station has been completed as authorized will require a fee of $155 per station. This notification is made on FCC Form 494-A.

139. **Renewal**: Each request for renewal of a previously-granted license authorization will require a fee of $155 per station. The request is made on FCC Form 405.

140. **Assignment or Transfer of Control**: Each request for the assignment or transfer of control of a licensed station will require a fee of $55 for the first station on the application and $35 for each additional station on the application. The request is made on FCC Form 702 for assignment of a transmitting station and 704 for transfer of control of a corporation holding

a station authorization. The fee applies to both voluntary and involuntary assignments or transfers.

141. **Extension of Construction Authorization**: Each request for the extension of time to construct a station will require a fee of $55 per station. The request is made on FCC Form 701.

142. **Special Temporary Authority/Request for Waiver of Prior Construction Authorization**: Each STA request for permission to construct and/or operate a radio station when circumstances require immediate or temporary operation of a station will require a fee of $70 per request. This request is made by letter. A request for waiver of prior construction authorization permitting construction before a conditional license is granted will require a fee of $70 per request. This request is also made by letter.

MULTIPOINT DISTRIBUTION SERVICE (including multichannel MDS)

143. **Conditional License**: Each request for a conditional license (formerly called a construction permit) will require a fee of $155 per station. The request is made on FCC Form 494.

144. **Major Modification of Conditional License or License Authorization**: Each request for a major modification to a previously-issued conditional license or license authorization will require a fee of $155 per station. The request is made on FCC Form 494.

145. **Certification of Completion of Construction**: Each certification will require a fee of $455 per channel. This request is made on FCC Form 494-A.

146. **Renewal**: Each request for the renewal of an existing license authorization will require a fee of $155 per station. The request is made on FCC Form 405.

147. **Assignment or Transfer of Control**: Each request for the assignment or transfer of control of a licensed station will require a fee of $55 for the first station on the application and $35 for each additional station on the application. The request is made on FCC Form 702 for assignment of a station authorization and 704 for transfer of control of a corporation holding a station authorization. The fee applies to both voluntary and involuntary assignments or transfers.

148. **Extension of Construction Authorization**: Each request for the extension of time to construct a station will require a fee of $110 per station. The request is made on FCC Form 701.

149. **Special Temporary Authority/Request for Waiver of Prior Construction Authorization**: Each STA request, or request to extend an STA, granting permission to construct and/or operate a radio station when circumstances require immediate or temporary operation of a station will require a fee of

$70 per request. This request is made by letter. A request for waiver of prior construction authorization permitting construction before a conditional license is granted will require a fee of $70 per request. This request is also made by letter.

DIGITAL ELECTRONIC MESSAGE SERVICE

150. **Conditional License**: Each request for a conditional license (formerly called a construction permit) will require a fee of $155 per nodal station. The request is made on FCC Form 494.

151. **Major Modification of Conditional License or License Authorization**: Each request for a major modification to a previously-issued conditional license or license authorization will require a fee of $155 per nodal station. The request is made on FCC Form 494.

152. **Certification of Completion of Construction**: Each certification of completion will require a fee of $155 per nodal station. This request is made on FCC Form 494-A.

153. **Assignment or Transfer of Control**: Each request for the assignment or transfer of control of a licensed station will require a fee of $55 for the first station on the application and $35 for each additional station on the application. The request is made on FCC Form 702 for assignment of a station authorization and 704 for transfer of control of a corporation holding a station authorization. The fee applies to both voluntary and involuntary assignments or transfers.

154. **Extension of Time to Complete Construction Authorization**: Each request for extension of time to construct a station will require a fee of $55 per station. The request is made on FCC Form 701.

155. **Special Temporary Authority/Request for Waiver of Prior Construction Authorization**: Each STA request, or request to extend an STA, granting permission to construct and/or operate a radio station when circumstances require immediate or temporary operation of a station will require a fee of $70 per request. This request is made by letter. A request for waiver of prior construction authorization permitting construction before a conditional license is granted will require a fee of $70 per request. This request is also made by letter.

INTERNATIONAL FIXED PUBLIC RADIO (Public and Control Stations)

156. **Extension of Construction Authorization**: Each request for the extension of the time to construct a station will require a fee of $185 per station. The request is made on FCC Form 701.

157. **Special Temporary Authority or Request for Waiver**: Each STA request, or request to extend an STA, granting permission to operate a station when

circumstances require immediate operation of a station will require a fee of $185 per request. The request is made by letter. A waiver request includes a request to suspend or modify a Commission rule.

FIXED SATELLITE TRANSMIT/RECEIVE EARTH STATIONS

158. **Modification of License**: Each request for the modification of an existing license will require a fee of $105 per earth station. The request is made on FCC Form 493.

159. **Assignment or Transfer of Control**: Each request for authorization for an assignment or transfer of control of a station will require a fee of $300 for the first earth station on the application and an additional $100 for each additional earth station on the application. The request is made on FCC Form 702 or 704.

160. **Developmental Station**: Each request for a license to operate a developmental station will require a fee of $1,000 per station. Application is made on FCC Form 493.

161. **Renewal of License**: Each request for the renewal of an existing earth station license at the expiration of the term of authorization will require a fee of $105 per earth station. The request is made on FCC Form 405.

162. **Special Temporary Authority/Waiver of Prior Construction Authorization**: Each request for authority to commence construction and/or operation, or major modifications to an earth station when circumstances call for immediate action prior to grant o f a construction permit or license requires a fee of $105. The request is made by letter. A copy of the underlying application or technical exhibits specified by Public Notice DA 87-732 (released June 18, 1987) is required to be submitted with the request.

163. **Amendment of Application**: Each amendment to an application pending before the Commission will require a fee of $105 per station. This includes modification, deletion or addition of information. The amendment is submitted by letter and should include a revised copy of the initial application.

164. **Extension of Construction Permit**: Each request to extend the time for construction will require a fee of $105 per station. The request is made on FCC Form 701.

SMALL TRANSMIT/RECEIVE EARTH STATIONS

165. **Modification of License**: Each request for the modification of the license for a small earth stations will require a fee of $105 per station. The request is made on FCC Form 493.

166. **Assignment or Transfer of Control**: Each request for the authorization an assignment or transfer of control of an earth station will require a fee

of $300 for the first station on the application and an additional $35 for each additional station on the application. The request is made on FCC Form 702 or 704.

167. **Developmental Station**: Each request for a license to operate a developmental station will require a fee of $1,000 per station. Application is made on FCC Form 493.

168. **Renewal of License**: Each request for the renewal of a station license at the expiration of the term of authorization will require a fee of $105 per station. The request is made on FCC Form 405.

169. **Special Temporary Authority/Waiver of Prior Construction Authorization**: Each request for authority to commence construction and/or operation, or major modifications to an earth station when circumstances call for immediate action prior to grant of a construction permit or license will require a fee of $105 per request. The request is made by letter. A copy of the underlying application or technical exhibits specified by Public Notice DA 87-732 (released June 18, 1987) is required to be submitted with the request.

170. **Amendment of Application**: Each amendment to an earth station application pending before the Commission will require a fee of $105 per station. This includes modification, deletion or addition of information. The amendment is submitted by letter and should include a revised copy of the initial application.

171. **Extension of Construction Permit**: Each request to extend the time for completion of construction will require a fee of $105 per station. The request is made on FCC Form 701.

RECEIVE ONLY EARTH STATIONS

172. **Modification of License or Registration**: Each request for the modification of an earth station license will require a fee of $105 per station. Application is made on FCC Form 493.

173. **Assignment or Transfer**: Each request for the assignment or transfer of control of a station requires a fee of $300 for the first station on the application and an additional $100 for each additional station on the application. The request is made on FCC Form 702 or 704.

174. **Renewal of License**: Each request for the renewal of an existing license at the expiration of the term of authorization will require a fee of $105 per station. The request is made on FCC Form 405.

175. **Amendment of Application**: Each amendment to an application pending before the Commission will require a fee of $105 per station. This includes modification, deletion or addition of information. The amendment is submitted by letter and should include a revised copy of the initial application.

176. **Extension of Construction Permit**: Each request to extend the time for completion of construction will require a fee of $105 per station. The request is made on FCC Form 701.

177. **Waivers**: Each request for a waiver will require a fee of $105 per request. The request is made by letter.

VERY SMALL APERTURE TERMINAL (VSAT) SYSTEMS

178. **Modification of License**: Each request for modification of a VSAT system license will require a fee of $105 per system. The request is made on FCC Form 493.

179. **Developmental Station**: Each request for a license to operate a developmental station will require a fee of $1,000 per station. The request is made on FCC Form 493.

180. **Renewal of License**: Each request for the renewal of an existing system license at the expiration of the term of authorization will require a fee of $105 per system. The request is made on FCC Form 405.

181. **Special Temporary Authority or Waiver of Prior Construction Authorization**: Each request for authority to commence construction and/or operation, or make major modifications to a VSAT system when circumstances call for immediate action will require a fee of $105 per request. These requests are made by letter.

182. **Amendment of Application**: Each amendment to a VSAT system application pending before the Commission will require a fee of $105 per system. Amendments are submitted by letter and should include a revised copy of the initial application.

183. **Extension of Construction Permit**: Each request to extend the time for completion of construction will require a fee of $105 per system. The request is made on FCC Form 701.

MOBILE SATELLITE EARTH STATIONS

184. **Initial Application of Blanket Authorization**: Each request for initial application of blanket authorization to operate numerous portable mobile units will require a fee of $5,630. This application for a license is made on FCC Form 493.

185. **Initial Application for Individual Earth Station**: Each initial application for an individual earth station to operate within an existing system will require a fee of $1,350. This application for a license is made on FCC Form 493.

186. **Modification of License**: Each request for modification of a system license will require a fee of $105 per system. The request is made on FCC Form 493.

187. **Assignment or Transfer of Control**: Each request for an assignment or transfer of control will require a fee of $1,505 per system. The request is made on FCC Form 702 or 704.

188. **Developmental Station**: Each request for the license of a developmental station will require a fee of $1,000 per station.

189. **Renewal of License**: Each request for the renewal of a mobile satellite system license at the expiration of the term of authorization will require a fee of $105 per system. The request is made on FCC Form 405.

190. **Special Temporary Authority/ Waiver of Prior Construction Authorization**: Each STA request to commence construction and/or operation, or make major modifications to a mobile system when circumstances call for immediate action will require a fee of $105 per request. These requests are made by letter.

191. **Amendment of Application**: Each amendment to a system application pending before the Commission will require a fee of $105 per system. The amendment is submitted by letter.

192. **Extension of Construction Permit**: Each request to extend the time for completion of construction will require a fee of $105 per system. The request is made on FCC Form 701.

RADIO DETERMINATION SATELLITE EARTH STATIONS

193. **Initial Application for Blanket Authorization**: Each request for blanket authorization to operate one or more earth stations in conjunction with a hub station will require a fee of $5,630. This request is made on FCC Form 493.

194. **Initial Application for Individual Earth Station**: Each initial application for a license to operate an individual earth station within an existing system will require a fee of $1,350. This application is made on FCC Form 403.

195. **Modification of License**: Each request for the modification of an existing system license will require a fee of $105 per system. The request is made on FCC Form 493.

196. **Assignment or Transfer of Control**: Each request for assignment or transfer of control of a system license will require a fee of $1,505 per system. The request is made on FCC Form 702 or 704.

197. **Developmental Station**: Each request for license of a developmental station will require a fee of $1,000.

198. **Renewal of License**: Each request for the renewal of a system license at the expiration of the term of authorization will require a fee of $105 per system. The request is made on FCC Form 405.

199. **Special Temporary Authority/ Waiver of Prior Construction Authorization**: Each request for special temporary authority granting permission to begin construction, begin operation or make major changes to a RDSS when circumstances call for immediate action will will require a fee of $105 per request. The request is made by letter.

200. **Amendment of Application**: Each amendment to a pending system application for Commission authorization will require a fee of $105 per system. The amendment is submitted by letter.

201. **Extension of Construction Permit**: Each request to extend the time for completion of construction will require a fee of $105 per system. The request is made on FCC Form 701.

SPACE STATIONS

202. **Assignment or Transfer of Control**: Each request for an assignment or transfer of control of a space station will require a fee of $5,000 per satellite. The request is made on FCC Form 702 or 704.

203. **Modification**: Each request for modification of an authorized space station will require a fee of $5,000 per station. The request is made by a detailed narrative application.

204. **Special Temporary Authority/ Waiver of Prior Construction Authorization**: Each request for an STA to operate a station when circumstances require immediate operation of a station will require a fee of $500 per request. The request is made by letter. The STA may allow for the provision of space segment services to various points. Each request for a waiver of prior construction authorization permitting construction before construction authorization is granted will require a fee of $500 per request. The request is made by letter.

205. **Amendment of Application**: Each amendment to a space station application pending before the Commission will require a fee of $1000 per space station. The amendment is submitted by letter.

206. **Extension of Construction Permit/Launch Authorization**: Each request to extend a required implementation milestone (e.g., beginning or completion of construction, launch date) will require a fee of $500 per request. The request is made by letter.

SECTION 214 APPLICATIONS

207. **Cable Landing License**: Each request for an authorization required to land or operate a submarine cable will require a fee of $1,025 when requested by a communications common carrier and $10,150 for non-common carrier.

208. **Special Temporary Authority**: Each STA request to install and/or operate lines of communication when circumstances so warrant will require a fee of $610 per request. The request is made by letter.

209. **Assignment or Transfer of Control**: Each request for authority to assign or transfer control of any entity holding a 214 authorization will require a fee of $610.. The request is made by letter.

RECOGNIZED PRIVATE OPERATING STATUS

210. Each request for recognized private operating status will require a fee of $610 per application. The request is made by letter.

ACCOUNTING AND AUDITS

211. **Field Audit**: Each field audit conducted by the Commission's staff will require a fee of $62,290. The Commission's staff will notify the carrier whenever a field audit is to be conducted and make arrangement for payment of the auditing fee.

212. **Review of Attest Audit**: Each review by the Commission's staff of an audit conducted by an independent accounting firm attesting to the methods used by a Tier 1 carrier to allocate its costs between regulated and nonregulated activities as set forth in the carrier's cost allocation manual filed with the Commission will require a fee of $34,000. The Commission's staff will notify the carrier by letter whenever a review of an attest audit is to be conducted and make arrangement for payment of the fee.

213. **Review of Depreciation Update Study**: Each request for staff review of a full study prepared by a common carrier in support of its requests to change the parameters underlying the rates at which it depreciates its plant will require a fee of $20,685 for a single state. Additional states included in the same study will require a fee of $680 per additional state. If a carrier requests full study treatment for one or more accounts, the fee required will be that for a full study.

214. **Interpretation of Accounting Rules**: Each request for a written interpretation of accounting rules will require a fee of $2,885 per request. The fee is required at the time the request is filed. The request is made by letter.

215. **Petition for Waiver**: Each request for a waiver of any of the Commission's accounting or audit rules including the prescribed accounting rules (Part 32), separation rules (Part 36) or access charge rules (Part 69) will require a fee of $4,660 per petition. The request is made by letter.

MISCELLANEOUS CHARGES

INTERNATIONAL TELECOMMUNICATIONS SETTLEMENTS ADMINISTRATIVE FEE FOR COLLECTIONS

216. The FCC acts as a clearinghouse in processing international telecommunications settlements in the maritime mobile and maritime mobile-satellite services. The administrative fee is $2 per line item charged to the FCC and subsequently billed to its licensees (except governmental licensees). A line item represents the total charge billed to the Commission by a foreign country for a single radiocommunication or transmission by an FCC licensee. The administrative fee will be billed to licensees of record on FCC Form 99.

RADIO OPERATOR EXAMINATIONS

217. **Commercial Radio Operator Examination**: Applicants for the Marine Radio Operator Permit, General Radiotelephone Operator License, Third Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate and First Class Radiotelegraph Operator's Certificate (and ship radar endorsement) must pass an examination before being issued a license, permit or certificate. A fee of $35 is required with the application for any of these examinations. The request for examination is made on FCC Form 756. The fee would be retained if the applicant fails to take the examination or does not pass the examination. In those instances where the ship radar endorsement test is taken in conjunction with another examination, there would be no additional charge for the endorsement examination. If the ship radar endorsement examination is taken alone, there would be a charge of $35.

218. **Renewal of Commercial Radio Operator License, Permit, or Certificate**: Each request for the renewal of a commercial radio operator's license, permit or certificate will require a fee of $35. These requests are made on FCC Form 756. At the current time only the Marine Radio Operator Permit and the three classes of Radiotelegraph Operator's Certificates must be renewed.

219. **Duplicate or Replacement Radio Operator License, Permit or Certificate**: Each request for a duplicate license, permit or certificate, or replacement thereof will require a fee of $35. These are necessary where the license, permit or certificate which has been lost, destroyed, mutilated or the holder's name has been legally changed or physical description significantly altered. See 47 C.F.R. §13.71. The request is made on FCC Form 756.

SHIP INSPECTIONS

220. **Inspection of Oceangoing Vessels**: Each request for the inspection of an oceangoing vessel under Title III, Part II of the Communications Act will require a fee of $620 per inspection. An additional $620 will be required for

a re-inspection done at another date, but re-inspection on the same day will not require the additional charge. The fee will also be due if the vessel fails to appear as scheduled without at least one days prior notice to the Field Office conducting the inspection. These requests are made on FCC Form 801.

221. **Inspection of Passenger Vessels**: Each request for the inspection of a passenger vessel under Title III, Part III of the Communications Act will require a fee of $320 per inspection. An additional $320 will be required for a re-inspection done at another date, but re-inspection on the same day will not require the additional charge. The fee will also be due if the vessel fails to appear as scheduled without at least one days prior notice to the Field Office conducting the inspection. These requests are made on FCC Form 801

222. **Inspection of Vessels under the Great Lakes Agreement**: Each request for the inspection of a U.S. flag vessel subject to the Great Lakes Radio Agreement will require a fee of $360 per inspection. An additional $360 will be required for a re-inspection done at another date, but re-inspection on the same day will not require the additional charge. The fee will also be due if the vessel fails to appear as scheduled without at least one days prior notice to the Field Office conducting the inspection. These requests are made on FCC Form 801.

223. **Inspection of Foreign Vessels**: Foreign flag vessels engaged in international voyages must meet the terms of the Safety of Life at Sea (SOLAS) Convention. These vessels are subject to periodic inspection at a charge of $540 per inspection. An additional $540 will be required for a re-inspection done at another date, but re-inspection on the same day will not require the additional charge. The fee will also be due if the vessel fails to appear as scheduled without at least one days prior notice to the Field Office conducting the inspection. These requests are made on FCC Form 801.

224. **Temporary Waiver for Compulsorily Equipped Vessel**: The Commission may grant a temporary waiver of the annual inspection for a compulsorily equipped vessel for a period not to exceed 30 days from the time of first arrival of a ship at a U.S. port. Each such request will require a fee of $60. The request is made on FCC Form 801.

Alternative 1 (FCBA): Fee form and check to Mellon. Application and fee form filed through Secretary's Office to Bureau's branches. Applications reassociated with fee paid data at the branch.

1. **Intake in Secretary's Office** (includes stamping of original and copies and determining appropriate branch to send it to): 82,000 applications x 4 minutes = 2.9 work years.

2. **Branch Reassociation with Fee Data** (includes checking computer printout, locating application, and indicating amount paid on application): 73,800 applications x 10 minutes = 6.6 work years.

3. **Returns** (includes locating application in branch that must be returned to fee section because of fee problems identified by Mellon Bank): 8200 x 10 minutes = .74 work years.

Total Work Years = 10.22 rounded to 10 ($250K)

Alternative 1A & 2: Same as alternative 1 but reassociation to be done at a central location in the bureau or fee section.

1. **Intake** (includes stamping of original and copies and determining appropriate branch to send it to): 82,000 applications x 2 minutes = 1.4 work years. Time to process reduced by two minutes because of "grosser" sort.

2. **Reassociate with Fee Data** (includes checking computer printout, locating application and indicating amount paid on application) 73,800 applications x 10 minutes = 6.6 work years.

3. **Returns** (includes locating application in bureau or fee section that must be returned because of fee problems identified by Mellon Bank) 8200 x 5 minutes = .37 work years. Time to locate reduced by 5 minutes because applications are in central location.

Total Work Years = 8.37 rounded to 8 ($200K)

Alternative 3: Fee form, check, and application to Mellon. Copy of application filed with Secretary's Office in case of dispute.

1. **Intake** (includes stamping of copy): 77,900 x .25 minutes = .17 work years.

2. **Review** (includes determination if item is feeable): 82,000 x 1 minute = .74 work years.

3. **Filing** (includes filing of feeable applications in some order to be recalled if needed): 82,000 x 1 minute = .74 work years.

4. **Recalled Applications:** 78 x one hour = .04 work years

Total Work Years = 1.69 rounded to 2 work years ($50K)

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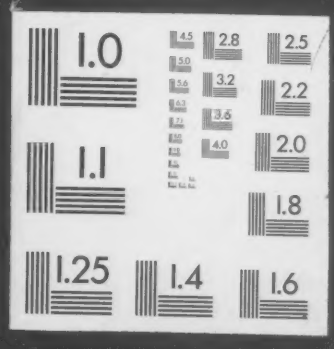
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